**(2003) 05 CAL CK 0036**

**In the Calcutta High Court**

**Case No :** G.A. No''s. 634 and 635 of 2003 and Writ Petition No''s. 902 and 903 of 2001

Dugar Impex Pvt. Ltd. APPELLANT

Vs

Commissioner of Customs RESPONDENT

**Date of Decision :** 07-05-2003

**Acts Referred:**
Customs Act, 1962 — Section 27A, 75A
Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 — Rule 13

**Citation :** (2003) 154 ELT 576

**Hon'ble Judges :** Bhaskar Bhattacharya, J

**Bench :** Single Bench

**Advocate :** Meheta, for the Appellant;

## Judgement

Bhaskar Bhattacharya, J.—These two matters were heard together as points involved herein are similar. I, however, propose to take G.A. No. 634 of 2003 with W.P. No. 903 of 2001 first.

G.A. No. 634 of 2003 with W.P. No. 903 of 2001

2. The main writ application is taken up along with the aforesaid interlocutory application. In the main writ application, the grievance of the writ petitioners was that the respondents authority was not paying the amount of drawback with interest on the basis of order passed by the Customs, Excise and Gold Control Appellate Tribunal, Kolkata, dated June 21, 2000 and accordingly prayed for direction upon the respondent to release the amount in terms of the order passed by the Tribunal in the connected appeal along with interest payable to the petitioner u/s 75A of the Customs Act.

3. During the pendency of the instant writ application the respondent paid a total amount of Rs. 1,47,56/910/- inclusive of principal amount of drawback of Rs. 79,82,500/-. In calculating the amount of interest so paid, the respondents authority has taken September 30, 1996 to be the date of filing of claim for

drawback and accordingly they had given interest with effect from December 29, 1996 at the rate of 15% per annum at the simple rate till 13th May, 2000 and thereafter from 14th May, 2002 till 25th November, 2002 at the rate of 8% per annum as per subsequent notification.

4. By filing the interlocutory application, the petitioners complained that the date of "let export" order being 25th April, 1996 interest is payable after the expiry of three months from that day viz. 25th July, 1996 and interest should be calculated at the rate of 15% per annum at the compound rate which was the notified rate of interest by virtue of Notification No. 32/95 (N.T.) Customs, dated 26th May, 1995 prevailing at the time of export.

5. In view of the fact that during the pendency of the writ application the principal amount and interest at the rate mentioned above having been paid, the only question that remains to be decided in the writ application is (a) whether the petitioner is entitled to get interest from July 25, 1995 as claimed in the interlocutory application, (b) whether the rate of interest should be 15% at the compound rate for the entire period or at the rate of 15% simple rate till May 13, 2002 and thereafter, at the rate of 8% simple rate from May 14, 2002.

6. Mr. Meheta, the learned Advocate appearing on behalf of the petitioners, by placing strong reliance upon the provisions of Sections 75A and 27A of the Customs Act contends that the legislature has not used the words "simple interest" in those sections but has mentioned as "interest" only whereas in the same Act, the words "simple interest" have been used in Sections 127C(5) and 143A of the Act. Mr. Meheta contends that intention of the legislature is thus clear that the object of the enactment was to confer right upon the exporter to get interest over interest in cases covered u/s 75A.

7. Mr. Meheta further submits that there was no valid ground for computing interest from December 29, 1996 on the ground that exporter gave first representation against belated payment on September 30, 1996 in answer to certain queries by department. He thus prays for direction for making payment for interest from 25th July, 1996 that is to say after the expiry of three months from the date of "let export" orders.

8. Therefore, the first question that arises for determination in this application is whether the word "interest" used in Sections 75A and 27A of the Act should be interpreted as compound interest.

9. After hearing the learned Counsel for the parties and after going through the materials on record I am of the view that whenever in any statute the legislature has fixed any rate of interest per annum without mentioning anything more, it should be treated to be interest at the simple rate. Unless it is specifically stated that interest is payable at compound rate and period of rest is indicated, interest at such rate is not recoverable.

10. When money is lent at interest and the interest is not paid at the end of the

 

period when it becomes due, but it is retained by the borrower, it may, if stipulated, be added on the principal and then the interest for the next period is charged not on the original principal but on the new principal which is the amount at the end of the period. In such a case, the principal increases from period to period and interest for each period is the interest on the amount at the end of each preceding period. This type of payment of interest is called interest at the compound rate and in such a case, the period when it becomes due must be specified; otherwise the compound rate cannot be calculated; in other words, if the interest is payable yearly then interest accrued up to the first year should be added to the principal and for the second year, interest will be calculated on the basis of principal plus interest accrued for the first year. Similarly, if the interest is payable half yearly, then interest accrued after six months should be added to the principal and interest for the next six months will be calculated on the basis of principal plus interest for the first six months and such procedure will continue until actual payment.

11. We are now to find out whether by virtue of Section 75A or 27A of the Act, the legislature intended that interest at the above compound rate would be payable. To appreciate the said question, the provisions contained in Sections 75A and 27A as those stood at the time of export are quoted below :

"Section 27A : If any duty ordered to be refunded under Sub-section 2 of Section 27 to an applicant is not refunded within three months from the date of receipt of application under Sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below 5% and not exceeding 30% per annum as is for the time being fixed for Central Government by notification in the official gazette and such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date or refund of such duty :

Provided that where any duty, ordered to be refunded under subsection (2) of Section 27 in respect of an application under Sub-section (1) of that section made before the date of which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs under subsection (2) of Section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under that sub-section for the purposes of this section.

Section 75A. Interest on drawback. - (1) Where any drawback payable to a claimant u/s 74 or Section 75 is not paid within a period of three months from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed u/s 27A from the date after the expiry of the said period of three months till the date of payment of such drawback:

Provided that where any drawback, ordered to be paid u/s 74 or Section 75 in respect of a claim under any of the said section filed before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such drawback.

(2) Where any drawback has been paid to the claimant erroneously, the claimant shall, within a period of three months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed u/s 28AA from the date after the expiry of the said period of three months till the date of recovery of such drawback."

12. A bare perusal of the aforesaid provisions make it clear that the legislature intended that interest should be granted at the simple rate per annum. In the aforesaid two sections there is no reference of any "rest" period which is essential in order that interest is allowed to be realised at compound rate.

13. In this connection, it will not be out of place to refer to the following provision contained in Section 5 of the Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993, a piece of legislation where provision of payment of interest at the compound rate has been provided:

"Section 5. Liability of buyer to pay compound interest - Not with standing anything contained in any agreement between a supplier and buyer or in any liability for the time being in force, the buyer shall be liable to pay compound interest with monthly rests at the rate mentioned in Section 4 on the amount due to the supplier."

(Emphasis given)

14. The aforesaid provision indicates the clear intention of the legislature to make payment of compound interest specifying the period of rest. In the aforesaid provision of Section 5, the interest was directed to be calculated with monthly rest, meaning, that after the expiry of every month interest will be added to the principal. I have already indicted that there is no mention of any period of rest in Section 75A or in Section 27A; thus there cannot be any presumption of payment of interest at the compound rate and the intention of the Act is to give interest at the simple rate mentioned therein. Although in Sections 127C(5) and 143A of the Act, the legislature has used the word "simple interest" but mere non-mention of such words in Section 75A or in Section 27A cannot imply that the word """interest" should be read as compound interest. I thus answer the first question against the petitioner.

15. So far the other question is concerned, I am of the view that interest should

 

be payable after the expiry of three months from the date of filing of claim for drawback. According to the Rule 13 of the Customs and Central Excise Duties Drawback Rules, 1995, triplicate copy of the shipping bill for export of goods under a claim of drawback shall be deemed to be a claim of drawback filed on the date on which the proper officer of customs makes an order permitting clearance and loading of goods for exportation u/s 51 and the said claim for drawback shall be retained by the proper officer making such order. Such order is called "let export" order in common parlance. However, if the said claim of drawback is incomplete in any material particular or is without the documents mentioned in Rule 13, the same should be returned to the claimant with a deficiency memo and the date of resubmission of the claim after removing the deficiency should be deemed to be the date of claim for the purpose of Section 75A.

16. Therefore, in the present case, if no deficiency memo has been given to the petitioner complaining any shortfall, the date of "let export" should be the date of submission of claim; otherwise date of resubmission of claim should be the date of claim and interest will be payable from the expiry of three months from either the date of "let export" or resubmission of claim pursuant to issue of deficiency memo, as the case may be.

17. I, however, find no substance in the contention of Mr. Meheta that in this case interest should be paid at the rate of 15%, that being the rate of interest notified at the time of export even though for subsequent period the interest have been reduced by further notification. Therefore, interest should be payable in accordance with the rate specified in notification issued from time to time and the respondents authority did not commit any illegality in granting interest at the rate of 8% from the subsequent date in view further notification.

18. In view of what have been stated above I direct the respondent authority to pay the balance amount of interest at the prescribed rate viz 15% per annum simple not from date of making representation but after the expiry of three months from the date when claim for drawback will all necessary papers were submitted before the respondents authority as indicated above. Such balance amount should be paid within a month. The writ application and the interlocutory application mentioned above are disposed of with the above observations.

19. In the facts and circumstances there will be, however, no order as to costs.

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20. Since the points involved are similar to the one earlier disposed of, this writ application is also disposed of with the similar direction by directing the respondent to pay simple interest on the principal amount at the rate of 15% per annum commencing from expiry of three months from the date of filing of the drawback claim till 28th December, 1996.

There will be, however, no order as to costs.

 