
(2001) 05 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 410 of 2000

IFGL Refractories Ltd.

APPELLANT

Vs

Joint Director General of Foreign Trade

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Central Excise Rules, 1944 — Rule 13, 13(1), 13(2), 13B, 191BB
Foreign Trade (Development and Regulation) Act, 1992 — Section 10(2), 5

Citation : (2001) 132 ELT 545

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Banerjee, for the Appellant; Roy Chowdhury, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—In this writ petition the petitioner has challenged the order dated 4th October, 1999 and also prayed for refund of terminal Excise Duty in accordance with the relevant provisions of the Import Policy and the Hand Book and to refund a sum of Rs. 84,91,806/- together with interest @ 24% per annum of the date of filing the claim. The order, which is under challenge, was passed by the Director General of Foreign Trade pursuant to previous order passed by this Court in the Writ Petition being No. 1576 of 1999.

2. The short fact of the case which led to the order being passed by this Court previously is as follows :-

The petitioner manufactures various items such as Tundish Nozzle, Tundish Shroud etc., which are refractory items used by the Vishakhapatnam Steel Plant (in short VSP) in the manufacture of steel products, which thereafter are exported abroad. VSP being an exporter is the holder of Advance Licence issued by the Director General of Foreign Trade (hereinafter referred to as DGFT) on the strength of which it can import various specified items including refractory items from abroad free of Customs Duty. Instead of importing such items from abroad it has chosen to procure such items from the petitioner who is the holder of an Advance Intermediate Licence under the Import Policy. The items manufactured

by the petitioners are in the normal course subject to Central Excise Duty under the Excise Law. However, since the supply of the said items by the petitioner to VSP constitutes "Deemed Export" within the meaning of the Import Policy the petitioner is entitled to certain benefits under the Policy. One of such benefits is refund of terminal Excise Duty under the Policy. So the petitioner duly applied for such refund of terminal Excise Duty from the DGFT being the respondent No. 2 herein and previously got refund for the quarters ending March 1994, June 1994 and September 1994. However, this time the DGFT refused to entertain demand of refund for the succeeding quarters. The DGFT is of the view that the petitioner was entitled to ab initio exemption of Excise Duty under Rule 13 of the Central Excise Rules, 1944 read with Notification No. 49/94 dated 22nd September, 1994. The supplies by the petitioner to VSP had commenced prior to the issue of the said Notification No. 44/94. At that point of time Rule 191BB and Notification No. 33/90 dated April 5, 1990, the provisions of which were substantially same as Rule 13 and Notification No. 44/94 were in force. In fact the petitioner had initially applied for exemption of Excise Duty under the earlier Rule and Notification but the Central Excise Authorities rejected the same on the ground that the goods in question were not intermediate products nor raw materials for export and thereafter the Excise authorities directed the petitioner to effect clearance to VSP on payment of Central Excise Duty.

The petitioner though preferred an appeal against the order of the Excise authorities but withdrew the same as the same became infructuous because of payment of Excise duty by the petitioner. The petitioner made repeated demands and request for refund from the Excise authorities; however, the aforesaid authorities have declined to entertain such demand contending that such claim lay with the DGFT.

3. Mr. Banerjee, learned Senior Advocate appearing in support of the writ petition contends that admittedly the writ petitioner is the holder of Advance Intermediate Licence within the meaning of paragraph 55 of the Export and Import Policy. The petitioners supplied the refractory materials to the VSP under the Duty Exemption Scheme as provided in paragraph 47 of the aforesaid policy. The items supplied by the petitioner to VSP being the ultimate exporter fall in the category of consumables and consequently are "inputs" in terms of paragraphs 47 and 55 and both of which fall within Chapter VII under the Heading "Duty Exemption Scheme".

4. He further contends that supplies made by the petitioner under the heading "Duty Exemption Scheme" in Chapter VII would be regarded as "Deemed Exports" under Advance Licence held by VSP. Therefore, the petitioner is entitled to get the benefit of Deemed Exports under paragraph 122 of the Exim Policy, which amongst others provides for refund of terminal Excise Duty.

5. Mr. Banerjee while assailing the impugned order passed by the Director General of Foreign Trade dated 4th October, 1999 contends that the findings of the DGFT are wholly absurd and misconceived as the Export and Import Policy

have been framed u/s 5 of the Foreign Trade (Development & Regulation) Act, 1992. Therefore, the aforesaid Policy has got the statutory force.

6. Paragraph 3 of the Handbook of Procedures (both 1994-95,1995-96) provided that the Handbook is to implement the provisions of Foreign Trade (Development & Regulation) Act, 1992, the Rules and Orders made thereunder and the Export and Import Policy 1992-97. According to him, the purpose of Handbook is to implement the Policy, which confers a substantive right and it cannot be taken away by the Procedure namely the Handbook. He draws an analogy of the provision of particular Rule vis-a-vis concerned Act. It is settled law that the Rule cannot override the provision of the Act under which the Rule is framed; therefore, the Policy framed under the aforesaid Act cannot be overridden by the Provision of the Handbook. In this connection he refers to a Supreme Court Judgment reported in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, . So, the basis of rejection of the petitioners' claim by the DGFT, because of no provision being made in the Handbook, should not be upheld by this Court. It is clear from the Policy which is to be considered and read alone nothing else, that the petitioners are entitled to the benefit of Excise Refund. Admittedly the petitioners have paid Excise Duty.

7. He contends that the provision of paragraph 122(c) of the aforesaid Policy applies equally to supplies pursuant to the Advance Intermediate Licence as well as Advance Release Orders. Therefore, he urges that the finding in the impugned order that the said Policy provides for refund of terminal Excise Duty in respect of supplies under Advance Release Orders, is not borne out from the provision of the said Policy.

8. He contends further that there is no provision that the supplies under Advance Intermediate Licence must necessarily be made without payment of Central Excise Duty and if such duty were paid then no refund thereof would be granted. The DGFT has impelled such interpretation, which really does not exist upon proper reading of the said Policy. The Handbook of Procedure did not make any specific provision in respect of Advance Intermediate Licences because the provisions in the said Policy are sufficient nor is it necessary to prescribe any procedure. Paragraph 16 of the said Policy enabled laying down of procedure for implementing the said Policy wherever required.

9. He further contends that though there is no express provision in the Handbook for granting refund of Excise Duty but this does not take away benefit given by the said Policy.

10. He further submits that harmonious construction should be given while reading the said Policy as well as the Handbook juxtaposition and the beneficial constructions in favour of the assessee and against Revenue should be given. He refers to the decision reported in Haldyn Glass Works Pvt. Ltd. Vs. M.L. Badhwar, and Mechanical Packing Industries Pvt. Limited Vs. C.L. Nangia and Others, . Moreover, he contends that this Handbook is of 1995-96 and it cannot have any

retrospective operation in respect of the transactions and supplies took place during the period of 1994-95 which did not contain any provision similar to paragraph 196 of the Handbook of 1995-96.

11. He further contends that two benefits have been given under the two separate laws. It is for the petitioner to opt for advantageous provision. Since the Excise Authority has rejected the plea of the petitioners and further having paid Excise Duty the petitioners can very well fall back upon the other law. The pre-condition to claim refund of Excise Duty is realization and payment of Excise Duty. In this connection he has referred to a decision of the Supreme Court reported in Collector of Central Excise, Baroda Vs. Indian Petro Chemicals, .

12. He contends that as far as the decision of Excise authorities are concerned it was rendered holding the petitioners' supplies were not raw materials nor intermediate goods and the Excise authority did not decide the question of refund but question of exemption of payment of Excise Duty before removal of the goods. Here is a question of refund of Excise Duty and not a question of exemption. So the decision of the Excise Authority has no bearing in this particular case.

13. As far as the question of jurisdiction is concerned this Court has got jurisdiction as the impugned order of the DGFT was passed pursuant to the Order of this Court and, in fact, petitioners sought to prefer an appeal against the aforesaid decision, it was not entertained as impugned order was passed pursuant to direction of this Hon'ble Court. Therefore, irrespective of the question of accrual of causes of action in relation to jurisdiction, this Court is the only forum where the petitioners should approach. Moreover, refund is to be made to the petitioners at its place of business situate within the territorial limit of this Court. He relies on a decision in this connection reported in Sreenivasa Pulvarising Industries Vs. Jai Glass and Chemicals Pvt. Ltd., .

14. He contends that the just and proper claim of the refund of the petitioner has wrongfully been withheld and the petitioner is entitled to interest @ 24% per annum from the date of filing of the claim till the date of payment. In this context, he relies on three Supreme Court decisions reported in O.P. Gupta Vs. Union of India (UOI) and Others, , Commissioner of Wealth Tax, Gujarat, Ahmedabad Vs. Vadilal Lallubhai and Others, .

15. He contends that since the claim of the petitioner has been rejected by the DGFT, it will not be proper for this Court to remand this matter once again. In this context, he relies on a decision of Supreme Court reported in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, . Accordingly, in the instant case it is only just and proper that consequential order for refund along with interest be passed.

16. Mr. Roy Chowdhury, Senior Counsel appearing for the respondents opposing this application submits that the impugned order clearly records that the writ petitioner was entitled to exemption from payment of Excise Duty in respect of

Monoblock supplied to V.S.P. under Notification No. 49/94 dated 22nd September, 1994 made under Rule 13.1 (b) of the Central Excise Rules. As such question of refund of terminal excise duty cannot and does not arise. If in spite of the said Notification the writ petitioner has and was made to pay Excise Duty, the remedy is for refund of the Central Excise Authority under the relevant Act and Rules. The writ petitioners, in fact, had proceeded against Central Excise Authority but for reason best known to them have abandoned and/or withdrawn such proceedings. No document has been disclosed which might be relevant in relation to alleged application for exemption from Central Excise Duty. Letter of the writ petitioner for permission for removal of goods under Rule 191BB of Central Excise Rules, 1944 has not been disclosed.

17. The Collector under Central Excise Rules 191BB has not given permission for such removal as neither goods under reference is intermediate products nor raw materials for export goods. It is not clear at all for what goods exemptions were claimed and why the same are not intermediate products or raw materials. No particulars of the documents making such claims has been disclosed in the petition nor as to why the petitioner's products Monoblock etc. are not intermediate products or raw materials in terms of the said exemption Notification No. 49/94 dated 22nd September, 1994 under Rule 191BB.

18. The period of dispute is from October 1994 till June 1995. The Central Excise Rule 191BB was omitted with effect from 1st October, 1994 by Notification No. 40/94-C.E. (N.T.), dated 22nd September, 1994 and the new exemption Notification No. 49/94-C.E. (N.T.), dated 22nd September, 1994 made in exercise of power under Rule 13 of the Central Excise Rules, 1944. Under this notification the writ petitioner was entitled to exemption from payment of duty as he was holder of Advance Intermediate Licence supplying goods to V.S.P. who is a holder of Duty Excise Entitlement Certificate and Advance Intermediate Licence in respect thereof.

19. It is significant that the writ petitioner has not made any application for exemption from payment of duty under the Notification No. 49/94 made in exercise of power under Rule 13 of the Central Excise Rules. The writ petitioner not having applied for the benefit of the exemption of payment of Central Excise Duty under the said Notification No. 49/94 dated 22nd September, 1994 and without proceeding against Central Excise Authorities for refund of such wrongly payment of Central Excise Duty have wrongfully approached the respondent herein for such refund. Since the goods supplied by the writ petitioner of V.S.P. being duty free under Advance Intermediate Licence (Notification No. 49/94 dated 22nd September, 1994) the question of giving refund of the said duty by DGFT in paragraph 122(c) cannot arise. This point has been clarified and procedure has been laid down in paragraphs 196-197 Annexure-IV, page 21 of A/O of the Handbook of the Procedure (Volume-1). Since the goods under the Advance Intermediate Licence were duty free, as stated above the Handbook of Procedure makes it clear that paragraph 122(c) of the import policy of 1992-97

will not apply to such a case.

20. He further contends the wrong done by the Central Excise Authority can be set right against it not against another authority.

21. In any event wrong decision or mistake in granting of exemption or incorrect classification of goods etc. can always be corrected, inter alia, for the reasons there cannot be any estoppel against statute. In support of his contention he has relied on the following decisions :-

(i) Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others, ;

(ii) Madras Fertilizers Ltd. Vs. Assistant Collector of Central Excise, Madras V Division, Madras and Others, ;

(iii) AIR 1989 617 (SC) ;

(iv) M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, .

22. Having heard the respective contentions of the learned lawyers and considering materials placed before me I am to examine whether the impugned order passed by the Director General of Foreign Trade, viz., the respondent No. 2 herein is sustainable under the law or not and further whether the writ petitioner is entitled to get relief for refund of terminal Excise Duty in accordance with the relevant provision of the import policy and subsequently to get refund of sum of Rs. 84,91,806/- together with interest @ 24% per annum on the date of filing the claim till the date of grant of refund to the petitioner.

23. In the affidavit-in-opposition though a point was taken that the impugned order is appealable but in the written notes of argument such point has been abandoned and even Mr. Roy Chowdhury did not press this point as to maintainability of the writ petition as order being appealable. Therefore, I need not decide the question of maintainability. I examine this matter on merit.

24. It appears from the argument and averments as well as the impugned order the following are the admitted position: -

(i) The petitioner is holder of advance ,intermediate licence which was issued for supply of various refractories items to the advance licence holder, viz., Vishakhapatnam Steel Plant for import of inputs for making export products. The refractories items were required for producing non-alloy steel bar for export.

(ii) The petitioners supplied the aforesaid input goods against the licences, viz., advance licence issued under the duty exemption scheme. So the aforesaid supply is regarded as deemed exports under this policy.

(iii) The petitioner has paid necessary Central Excise Duty for removal of goods from its factory to the aforesaid exporter.

25. Under the aforesaid admitted positions the petitioner contends that it is entitled to the benefit for deemed exports as mentioned in paragraph 122 of the

Export and Import Policy covering 1st April, 1992 to 31st March, 1997. The outstanding claim for refund of terminal Excise Duty relates to the period from October, 1994 to June, 1995.

26. It appears that respondent No. 2 has rejected the claim principally on three grounds, viz., (i) under paragraph 197 of the Handbook of Procedures (Volume-I) 1994-95 there is no provision for giving deemed export benefit in respect of supply under advance intermediate licence. This paragraph clearly provides for giving benefit of deemed export in case of supply under advance release order, (ii) in this case supplies have been effected under advance intermediate licence. So these are exempted from payment of Central Excise Duty in terms of Rule 13(1)(B) of Central Excise Rules read with Notification No. 49/94 dated 22nd September, 1994 in accordance with the conditions prescribed therein and (iii) when there is a provision for exemption of Central Excise Duty question of refund of terminal Excise Duty does not arise.

27. Upon careful scrutiny of the order of the respondent No. 2 it appears to me the DGFT has by necessary implication accepted that the petitioner being the supplier of the aforesaid refractory items to the advance licence holder is entitled to get benefit of deemed exports but since Handbook of Procedures does not provide for such benefit to be extended by way of refund of Excise Duty, he could not grant relief. I do not appreciate that as because Handbook of Procedures does not provide for granting relief of refund of terminal Excise Duty as holder of advance intermediate licence; right conferred upon by the Exim Policy should he denied. In Halsbury's Laws of England, Fourth Edition, Volume I, paragraph 89 which has been quoted with approval and acceptance in paragraph 19 of Judgment of Supreme Court reported in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, , "it is stated that the purpose of an order of mandamus is to remedy defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases, where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual".

28. Upon careful reading of the Export and Import Policy for the relevant years (hereinafter Exim Policy in short) it appears to me that it was adopted amongst other, to promote export of Indian products to foreign countries aiming at to earn foreign exchange and to increase global market. In order to achieve this goal various incentives in numerous ways were provided to the exporters. One of the methods is to give benefit of exemption from payment of any duty for import of input materials to be used in production of export materials on certain terms and conditions and for this purpose advance licence is issued to the prospective exporters. However, if there be any indigenous supplier of the inputs as substitute of imported variety then it would be open for the exporters to procure the same from indigenous sources. In that case the advance licences are to be

surrendered and/or cancelled to the extent of quantity of the input materials from indigenous sources. The indigenous supplier in such case is entitled to get benefits either by way of exemption from payment of Excise Duty or to get refund of Excise Duty if already paid. These indigenous suppliers are provided with amongst other advance intermediate licence or advance release order. Therefore, the whole object is that the exporters should get duty free input for production of export materials. In the event there being collection and/or procurement from indigenous sources then exporter is inevitably bound to pay under general law necessary Excise Duty as the incidence of which is bound to be shifted to it. As such the scheme has been formulated under the Exim Policy either to exempt the supplier from payment of any Excise Duty or, to refund the terminal Excise Duty if it is excisable materials and the same is paid so that exporter need not have to pay any duty. Therefore, the whole object is also to see that the supplier may not get double benefits in case of supply of inputs of the materials to the exporter under the above scheme.

29. The respondent No. 2 has been persuaded himself to hold that the petitioner was entitled to get exemption under Rule 13(B) read with the Notification No. 49/94 dated 22nd September, 1994. It should have applied to the Excise Authority for refund of the same under relevant Rules. His conviction to my mind is that since there is a provision for exemption from payment of Excise Duty that is why there is no express provision in the Handbook of Procedures for granting of deemed export benefit in the form of refund of terminal Excise Duty to the advance intermediate licence holder. The respondent No. 2 may be right in certain cases, viz., where Excise Duty is not required to be paid the above benefit may not be extended.

30. Upon careful reading of Rule 13(2) of Central Excise Rules, 1944 it appears that in certain cases and on fulfilment of certain conditions as mentioned in the Notification so to be issued from time to time manufacturer may be allowed to remove intermediate goods without payment of duty for supply to the manufacturer of export goods in terms of advance intermediate licence scheme, and in that case the question of refund of terminal Excise Duty does not and cannot arise as there was no payment of Excise Duty, but this rule does not provide for refund of Excise Duty.

31. In this case in my view the respondent No. 2 has misdirected himself having wrongly applied Rule 13 read with Notification No. 40/94-C.E. (N.T.) dated 22nd September, 1994 as corrected by corrigendum Notification No. G.S.R. 742 (E) dated 6th October, 1994 and subsequent two notifications. The writ petitioner initially prayed for removal of goods without payment of Excise Duty as being holder of advance intermediate licence and it was found by the Excise Authority that the petitioners are not supplier of intermediary goods to the exporter and this would be applicable in case of supply of intermediate goods. The decision of the Excise Authority on fact finding as not being intermediate goods is final and conclusive. Moreover, from the materials I find the exporter VSP itself at certain

point of time had to pay the Excise Duty for supply of the same goods made by the writ petitioner. As I have already observed in order to get removal of the goods without payment of Excise Duty there are 13 pre-conditions to be fulfilled. In this case I do not find any of the pre-conditions having been fulfilled. So the respondent No. 2 has wrongly held that the petitioner was entitled to the exemption contrary to what has been decided by the Excise Authority. The decision of the Excise Authority cannot be upset by the DGFT for which he has not been conferred with power in order to defeat the claim of the writ petitioner. Factually the petitioner has paid Excise Duty, whether rightly or wrongly, is not the question here. The question involves in this case is entitlement of refund of terminal Excise Duty. The respondent No. 2 should have proceeded in this direction.

32. I find from Chapter X of Exim Policy covering from 1st April, 1992 to 31st March, 1997 in its paragraph 122 that -Deemed exports shall be eligible for the following benefits in respect of manufacture and supply of goods qualifying as deemed exports:

(a) Duty Exemption Scheme only in respect of the deemed exports categories as covered under paragraph 56 (ii), (iii), (v) & (vii) of the Policy; or

(b) Duty Drawback Scheme;

(c) Refund of terminal Excise duty;

(d) Special Import Licence at the rate of 5% of the FOR value (excluding all taxes and levies) of supplies made with effect from 1st April, 1994.

33. Therefore, the petitioner has got acquired the substantive right in terms of the aforesaid Policy which in my view is a promise held out by the respondent Nos. 1 and 2 for extending the benefit. The petitioner altered its position acting upon said promise by procuring advance intermediate licence.

34. In this case the petitioner claims in terms of para 122 Clause (c) for refund of terminal Excise Duty. Admittedly granting relief in terms of Clauses (a), (b) and (d) in this case do not arise. The respondent No. 2 did not grant the aforesaid relief as because the relevant provision of the Handbook of Procedures (Vol. I) does not provide for granting relief in terms of Clause (c). He has held that only in case of advance release order as given in paragraph 64 of the Policy, benefits under paragraphs 122 (b), (c) and (d) has been given to the indigenous supplier. In my view the Handbook of Procedures is nothing but Rules provide for procedure and manner for granting benefit as provided in the Exim Policy has been made. I find there is a force of Mr. Banerjee's submission that the provision of the procedural law and rule cannot be overridden or whittle down the substantive law. I find decision of the Supreme Court cited by Mr. Banerjee rendered in a case deciding on a question of implication of contrary provision of Income Tax Rules in the case of Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, supports the contention of Mr. Banerjee. In

that case it has been held by the Supreme Court amongst other as follows: -

"The High Court was right not accepting the reasoning of the Tribunal based on the rates relating to depreciation u/s 10(2)(vi) and the assessee having claimed that the sanitary and pipeline fittings fell within the meaning of "furniture and fittings" in Rule 8(2) of the Rules. It has been rightly observed that the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."

35. In this case though it is true that there is no expressed procedure for granting benefit in the Handbook of Procedures but this cannot take away petitioner's right granted under aforesaid Exim Policy. Nowhere in the Handbook of the Procedure provides not to grant such benefit. Therefore the respondent No. 2 should have considered this matter in this angle. Even if it is assumed that the writ petitioner is entitled to get benefit of exemption then there cannot be any legitimate bar against the petitioner applying for getting benefit of deemed exports. It would be the option of the petitioner to take advantage of any law particularly, which is more beneficial. This view of mine finds support of law settled by the Supreme Court while deciding the case of Collector of Central Excise, Baroda Vs. Indian Petro Chemicals, cited by Mr. Banerjee. This judgment has laid down as follows: -

"We have read the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal under appeal. It came to the conclusion that two exemption notifications were applicable and gave to the assessee the benefit of that notification which was more beneficial to it. Having read the judgment and order and heard learned Counsel, we see no good reason to interfere with the judgment and order under appeal. The appeal is dismissed. No order as to costs."

36. The payment has already been made; therefore, the petitioner is entitled to get refund of the same. I am unable to accept the contention of Mr. Roy Chowdhury that the petitioner is not entitled to get any benefit in this matter and he should have approached the Central Excise Authority for getting refund. Since the Central Excise Authority has decided the aforesaid Rule 13(B) read with the said Notification did not apply therefore the realization and payment of Excise Duty is bound to be held valid.

37. The decision cited by Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others, is not applicable in this case as I have not held here that in view of the previous order being passed by the respondent No. 2 granting refund the petitioner is entitled to get refund. There is no quarrel with propositions laid down by the Supreme Court in other authorities cited by Mr. Roy Chowdhury but these are not applicable at all in this case.

38. Therefore, the impugned order is set aside. Accordingly, I hold that the petitioner is entitled to get refund of terminal Excise Duty. So I direct the respondent No. 2 to pay sum of Rs. 84,91,806/-. This direction can be given by

this Court in view of law laid down by the Apex Court in the case of the Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, wherein it has been held amongst other, "...and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion". The petitioner, however, is not entitled to get the interest @ 24% per annum as there is no law for granting interest at the aforesaid rate. The petitioner, however, is entitled to interest @ 12% per annum. I find support for granting interest at this rate from the following Supreme Court decisions:

(i) Abhinash Chandra Gautam (Since deceased) through his Lrs. Vs. Union of Territory of Tripura and Another, and

(ii) O.P. Gupta Vs. Union of India (UOI) and Others,

This interest will be computed from date of passing of the impugned order.

39. The petitioner is entitled to costs assessed at 200 gms, to be paid by the respondent Nos. 1 and 2.

40. Xerox certified copy on urgent basis shall be made available to the parties concerned.