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(2002) 06 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No. 62 of 2002

Jai Bhagwati Impex Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 10-06-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 234 ELT 45 : (2009) 13 STR 24

Hon'ble Judges : V.C. Daga, J;P.V. Hardas, J

Bench : Division Bench

Advocate : A.N.S. Nadkarni and H.D. Naik, for the Appellant; J.S. Vaz, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

V.C. Daga, J.—The petitioner has filed this petition claiming refund of the admitted amount on admitted facts.

The entitlement of the petitioner to claim refund is not in dispute. It is an admitted fact that the petitioner was allowed provisional clearance to clear goods on payment of duty, on the enhanced value. On 14th December, 1998, the Dy. Commissioner of Customs, Goa, issued show cause notice to the petitioner and the same was confirmed against the petitioner.

2. Being aggrieved by the aforesaid order of confirmation, the petitioner carried an appeal to the Customs Excise & Gold (Control) Appellate Tribunal (for short "CEGAT"), Mumbai. The CEGAT was pleased to reduce the fine and penalty by Order dated 9th November, 2001 2002 (145) ELT 158 . The petitioner made representation to the Department; wherein the petitioner requested the respondent No. 2 to refund the excess amount which was paid by the petitioner at the time of provisional assessment. Finding no attempt on the part of respondent No. 2 to refund the excess amount, the petitioner has approached this Court under Article 226 of the Constitution of India and claimed refund with interest thereon, at the rate of 24% per annum, from the date of payment till refund thereof.

3. The learned Counsel for the petitioner relied upon the judgment of the Division Bench of this Court in Goyal Fibres P. Ltd. v. Union of India and Ors. Writ Petition No. 4016 of 2001 (unreported) dated 11th January, 2002, to which one of us, (Daga, J.), is a party, wherein; in more or less similar circumstances, claim for refund with interest thereon at the rate of 6% per annum was allowed.

On being noticed, respondents appeared through their counsel and submitted that the Order of CEGAT is the subject-matter of challenge in the Special Leave to Appeal pending in the Apex Court and requested for adjournment till the fate of the said SLP is decided. It is an admitted fact that the SLP is still pending for admission. No interim relief has been granted in favour of the respondents.

4. It is thus clear that there is no reason for non-payment, other than pendency of the SLP before the Apex Court.

The only question which needs consideration is whether the respondents are justified in refusing to grant refund to the petitioner on the ground that the SLP is pending before the Apex Court, especially when no interim relief has been obtained by them inspite of sufficient time which was available with them for obtaining appropriate interim relief. On the contrary, the learned Advocate General appearing for the petitioner, made a statement that when this matter was placed before the Apex Court for hearing in admission matters, the respondents sought adjournment and did not press for interim relief. In this view of the matter, in the absence of any interim relief, the petitioner is entitled to press for a refund.

5. It is needless to mention that in a number of cases Revenue itself has been proceeding with recovery proceedings against assessees, in spite of pendency of appeals in the higher courts, including the Apex Court. In our opinion, the respondents should have moved for urgent hearing of the S.L.P., or ought to have obtained interim relief expeditiously. Mere pendency of the SLP for admission cannot be used as a ground to deprive or postpone the benefits of the order of the CEGAT.

6. It is not in dispute that the petitioner is a commercial establishment. The petitioner is deprived of its liquidity in trade, commerce and business. Such deprivation is bound to cause substantial prejudice to it. The petitioner, therefore, is justified in claiming interest for delayed payments. The Apex Court in the case of Life Insurance Corporation of India and Anr. v. Cangadhar Vishwanath Ranade (Dead) by L.Rs. AIR 1990 S.C. 185 ruled that such deprivation has to be compensated in terms of money by awarding interest at a suitable rate, within a reasonable period. The Division Bench of this Court had also taken the same view in the case of Goyal Fibres (P) Ltd., (cited supra).

7. We, accordingly, direct the respondents to refund the refundable amount within 60 days from today, with interest at the rate of 6% per annum, from the date of payment till refund is made in full and final, failing which refund amount shall carry interest at the rate of 10% per annum, instead of 6% as granted

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herein. It is needless to mention that this refund shall be subject to the order as may be passed in the SLP pending before the Supreme Court.

Petition stands disposed of in terms of this order, with no order as to costs.

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