
(1993) 08 BOM CK 0055

In the Bombay High Court

Case No : Notice of Motion No. 371 of 1993 in Writ Petition No. 617 of 1979

Kapoor Silk Mills

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Citation : (1993) 68 ELT 572

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Judgement

1. The Motion was taken out by Union of India on July 21, 1993 seeking direction to Prothonotary and Senior Master of this Court to encash the Bank guarantee with interest accrued thereon to the respondents. It is really unfortunate that the Union of India is required to take out this Motion seeking direction to Prothonotary. We are surprised why the Prothonotary has not encashed the Bank guarantee and paid at least the principal amount in spite of order delivered by Division Bench to which one of us (Pendse, J.) was a party on October 16, 1992 in group of Civil Applications filed for the identical relief. The decision of Division Bench points out that in pursuance of judgment delivered by Supreme Court reported in Ujagar Prints Vs. Union of India (UOI), the Government of India is entitled to forthwith enforce the bank guarantee. It would be appropriate to quote the operative part of the judgment of Supreme Court to be found in paragraphs 32 and 32A, which reads as under:-

"32. In the result the appeals preferred by the Union of India are allowed and the judgment of the Gujarat High Court under appeal is set aside. The appeals preferred by the processors against the judgment of the Bombay High Court and the writ petitions filed by the processors directly in this Court are dismissed. There will, however, be no order as to costs in the appeals and the writ petitions.

32A. The Union of India and its authorities shall be entitled to recover the amounts due by way of arrears of excise duty and shall be entitled to take necessary steps to seek the enforcement of the bank guarantees, if any, for the

recovery of the arrears."

2. In pursuance of orders passed by Supreme Court in several matters arising from the judgment delivered by this Court, Bank guarantees were furnished by the processors. The Union of India moved Prothonotary to encash Bank guarantees and make payment as per direction of Supreme Court. The Government of India also sought payment of interest accrued on the Bank guarantees furnished by the processors. Some of the proceedings were instituted on the appellate side of this Court and failure to enforce the Bank guarantees gave rise to filing of Civil Applications by Government of India for direction to the Registry. Those Civil Applications were disposed of by Division Bench on October 16, 1992 and the Registry was directed to forthwith encash the Bank guarantees, as demanded by the Union of India. The Registry was further directed not to withhold encashment for any reason whatsoever save and except order from Supreme Court. The order passed by Division Bench was not carried to Supreme Court and Registry encashed the Bank guarantee and made payment to Union of India.

3. The present Motion arises out of Writ petition filed on the Original Side of this Court and where the Bank guarantee was furnished to the Prothonotary and Senior, Master. Shri Desai, learned counsel appearing on behalf of Department, submitted that the Prothonotary cannot decline to enforce the Bank guarantee and make payment as directed by Supreme Court. The submission is correct and deserves acceptance. Shri Desai also submitted that Government of India is entitled to payment of interest for the deferred payment by the processors by furnishing Bank guarantee. Shri Desai submitted that by securing interim relief from Supreme Court, the processors paid 50% of amount due and furnished Bank guarantee for the remaining balance amount of duty. Shri Desai contended that once the claim of the processors was turned down by Supreme Court and it was held that the Government of India is entitled to the remaining amount of duty, then there is no reason why the Government of India should be deprived of interest on the said balance amount. It was contended that the processors took advantage by interim order of Supreme Court and the Government of India was deprived of the amount of duty payable forthwith and, therefore, it is in the fitness of things to award interest on the balance amount payable to the Government of India. We find considerable merit in this contention also.

Dr. Chandrachud, learned counsel appearing on behalf of the petitioners, urged that in view of order dated November 12, 1992 passed by Chief Justice P. D. Desai and Justice S. H. Kapadia on Notice of Motion No. 503 of 1992, the Government of India is not entitled to any payment unless Supreme Court gives clarification. Dr. Chandrachud urged that before Division Bench presided over by Chief Justice, the Government of India stated that they would approach Supreme Court for appropriate direction with regard to adjustment/appropriation of the amount of interest which has accrued on the Motion. But Division Bench then

observed that since the Government of India is approaching Supreme Court for direction, it would be fit and proper if order sought by them in respect of principal amount is also obtained from Supreme Court. Dr. Chandrachud submitted that in pursuance of direction of Division Bench, the Government of India has filed SLP in Supreme Court. Dr. Chandrachud also invited our attention to order dated June 25, 1993 passed by this Bench on Notice of Motion No. 400 of 1992. This Motion was taken out by Government of India claiming only payment of interest on the fixed deposit receipt of Bank guarantees. The Motion was dismissed because the Union of India had earlier agreed before Division Bench presided over by Chief Justice to move Supreme Court for clarification in respect of payment of interest. We are unable to accede to the submission of Dr. Chandrachud that even the payment of principal amount should be withheld till the Supreme Court gives clarification. In the first instance, no clarification whatsoever is required in respect of clear-cut direction given by Supreme Court in paragraph 32A of the judgment and which are quoted hereinabove. It is not permissible for the petitioners to raise all sorts of worthless objections to deprive the Government of India of Payment of duty and which has found to be payable not only by the judgment of this Court, but also of Supreme Court. We see no reason whatsoever for withholding the substantial payment of duty. Though we are directing the Prothonotary to forthwith encash the Bank guarantees and make payment of the principal amount of duty to Government of India, we are deferring payment as regards the interest in view of the earlier order passed by this Court till Supreme Court issues clarification.

4. Accordingly, Motion is made absolute and Prothonotary is directed to forthwith encash the Bank guarantee and pay the amount of duty due to the Government of India. The Prothonotary is directed to withhold the amount of interest accrued on the fixed deposit receipt or the Bank guarantees, as the case may be till the clarification is secured by the Government of India from Supreme Court. The Prothonotary should carry out this order not only in the present matter, but also in respect is to be made to Union of India. The Prothonotary is also directed to make the payment out of the cash deposit, if any, made by the processors.

5. Dr. Chandrachud at this stage applies for stay of operation of this order. Prayer refused. The Prothonotary shall pay the amount forthwith. The petitioners shall pay the costs of the Motion.