**(2013) 06 GUJ CK 0051**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 242 of 2011

Mangal Textiles Mills (I) P. Ltd. APPELLANT

Vs

Union of India and Another RESPONDENT

**Date of Decision :** 13-06-2013

**Acts Referred:**

**Citation :** (2013) 22 GSTR 332

**Hon'ble Judges :** S.G. Gokani, J;M.R. Shah, J

**Bench :** Division Bench

**Advocate :** Hasit Dilip Dave, for the Appellant; Amee Yajnik, for the Respondent

## Judgement

M.R. Shah, J.—The present special civil application under articles 226 and 227 of the Constitution of India has been preferred by the petitioner herein for appropriate writ direction and order to calculate and grant interest at the rate of 18 per cent. per annum to the petitioner on the amount of Rs. 5,79,968 applied by them with effect from September 19, 2002 by quashing and setting aside the impugned communication/order of respondent No. 2 dated November 19, 2010. The facts leading to the present special civil application in nutshell are as under:

That the petitioner is engaged in the manufacture of excisable goods falling under Chapters 52, 54, 55 of the Schedule to the Central Excise Tariff Act, 1985. That at the relevant time, i.e., period of year, 2000, the petitioner was operating under the compound levy scheme, i.e., section 3A of the Central Excise Act (hereinafter referred to as "the Act"). According to the petitioner, they discharged their Central excise duty liability firstly for the period of December, 1998 to March, 1999 and applied for re-fixation of APC on May 14, 1999 and then on August 14, 2000. That the duty liability worked out to Rs. 92,50,000. That the Commissioner accordingly re-fixed the APC and communicated to the petitioner on August 26, 2002 that their duty liability for the period February 16, 1998 to March 31, 2000 totally was Rs. 1,18,87,096 and more was actually already collected by an amount of Rs. 5,79,968. That thereafter, the petitioner applied for abatement and immediate refund of the excess duty paid. However, according to the petitioner and on the direction of the Department, they were advised to file refund claim for the excess duty so paid. Accordingly, the petitioner filed the refund claim for the above amount on various ground claiming rightful refund of the same vide the claim dated September 19, 2002. That the petitioner was served with the show-cause notice dated December 11, 2002 to show cause as to why the claim refund should not be rejected on the ground of unjust enrichment.

That by an order dated January 28, 2003, the Deputy Commissioner of Excise though allowed the refund, however passed an order to credit the same to consumer welfare fund on the ground of unjust enrichment.

Being aggrieved and dissatisfied with the order passed by the Deputy Commissioner of Excise dated January 28, 2003, the petitioner preferred an appeal before the Commissioner (Appeals), Ahmedabad, which came to be dismissed by the Commissioner (Appeals), Ahmedabad by an order dated February 16, 2005. That the matter was carried to the Tribunal and the Tribunal by the order dated August 9, 2006 remanded the matter to the original authority for proving whether there was in fact an unjust enrichment or not. That by an order dated July 17, 2007 Assistant Commissioner again rejected the refund claim of the petitioner. It is required to be noted at this stage that as such during the course of hearing before the Assistant Commissioner-original authority, the petitioner produced all the relevant documents inclusive of cost accountant certificate and other documents in support of their claim that there was no unjust enrichment and that they were entitled to refund of duty paid in excess. Despite the above and without considering the same the Assistant Commissioner rejected the refund claim by an order dated July 17, 2007. Being aggrieved and dissatisfied with the order-in-original passed by the Assistant Commissioner dated July 17, 2007 rejecting the refund claim of the petitioner, the petitioner preferred an appeal before the Commissioner (Appeals) and having noticed that the petitioner had submitted the voluminous documents, including chartered accountant certificate, cost accountant certificate and the judgment of different forum, to prove their point that the duty liability was absorbed by them and not passed on to the consumer and as such "unjust enrichment" will not be applicable in the case, the Commissioner by an order dated February 6, 2008 remanded the matter to the original adjudicating authority for reexamining the whole issue, after proper scrutiny of all the documents submitted by the petitioner and pass a reasoned order accordingly.

That thereafter on remand and considering all the relevant documents produced by the petitioner which were already produced on April 18, 2007, by an order dated August 1, 2008, the original adjudicating authority the Assistant Commissioner sanctioned the refund amount of Rs. 5,79,968 u/s 11B of the Act. It appears that against the order-in-original dated August 1, 2008 passed by the Assistant Commissioner, the Department preferred an appeal before the Commissioner (Appeals) and the very Commissioner of Appeals who earlier remanded the matter to the original authority, by an order dated November 28, 2008 allowed the said appeal and quashed and set aside the order-in-original dated August 1, 2008 passed by the Assistant Commissioner sanctioning the refund of Rs. 5,79,968. That being aggrieved and dissatisfied with the order passed by the Commissioner (Appeals), the petitioner approached the Appellate Tribunal and the Appellate Tribunal by an order dated July 21, 2009 remanded the matter to the Commissioner for fresh decision, after dealing with all the evidence relied upon by the original adjudicating authority in favour of the assessee. That thereafter on remand, the Commissioner of Appeals rejected the remand appeal of the Revenue and upholding the order-in-original dated August 1, 2008. That thereafter, the refund was granted to the petitioner however simultaneous a show-cause notice for recovery as erroneous refund was also issued. That thereafter by an order dated February 11, 2010 the said show-cause notice for recovery came to be dropped by the Assistant Commissioner, which came to be confirmed up to the. Tribunal. That in the meantime, the petitioner came to be paid the refund of Rs. 5,79,968 by a cheque dated September 8, 2009. However, as the petitioner was not paid the interest on the refund the amount as provided u/s 11B of the Act, he submitted the application submitting that they are entitled to the interest on the refund amount from 1999 to 2002 that the said application came to be rejected by the Department by the impugned order dated November 19, 2010 and the said order dated November 19, 2010 rejecting the prayer of the petitioner of interest on the refund amount is subject-matter of this petition.

2. Shri Dave, learned advocate for the petitioner has vehemently submitted that the respondent has materially erred in not granting the interest from 1999 to 2000 till date of actual refund, i.e., August 1, 2008. It is submitted that as such even after the order of refund dated August 1, 2008 actual amount of refund was not paid and the same came to be paid actually by a cheque on September 8, 2009 and therefore, as such the petitioner shall be entitled to interest on the refund from 1999 to September 8, 2009.

3. It is further submitted by Shri Dave, learned advocate for the petitioner that in any case when the petitioners submitted all the necessary documents like cost accountant certificate, statement of bills and process cost, etc., after first order of remand, i.e., April 18, 2007, the applicant shall be entitled to the interest on the refund amount, at least from April 18, 2007 till the actual refund is paid. It is therefore requested to consider the claim of the petitioner for the interest on the refund amount at least from April 18, 2007. It is further submitted by Shri Dave, learned advocate for the petitioner that when the respondents have collected the amount from the petitioner wholly unauthorisedly, the respondents cannot escape the liability of interest as available provided u/s 11B of the Act.

4. On the other hand and while opposing the petition and supporting the order passed by the authority denying the interest on the refund amount, Ms. Amee Yajnik, learned advocate for the Department has submitted that as it was found

 

that at the relevant time the petitioner did not produce the relevant documents to prove that the duty was not passed on to the consumer and there was no unjust enrichment and after submitting all the supporting documents thereafter and after an order of refund came to be passed, the Department has rightly denied the interest on the refund amount. Therefore, it is requested to dismiss the present petition.

5. Heard the learned advocates for the respective parties at length. From the chronological events referred to hereinabove, it appears that petitioner was served with the show-cause notice as to why the actual amount of refund should not be denied to him on the ground unjust enrichment. The petitioner did not submit all the necessary documents to show and prove that the duty was not passed on to the consumer and there was no unjust enrichment and at the relevant time only produced chartered accountant certificate without any supporting documents. It also appears that after the first order of remand by the Tribunal dated August 9, 2006, remanding the case to the original adjudicating authority for fresh decision and with an opportunity to the petitioner to produce all the evidence in the form of chartered accountant certificate to prove the case of unjust enrichment, the petitioner produced the relevant supporting documents before the original adjudicating authority on April 18, 2007. Despite the above, the original adjudicating authority denied the refund without considering the aforesaid supporting documents and therefore, the Commissioner (Appeals) passed an order dated July 17, 2007 remanding the matter to the original adjudicating authority to consider the claim of the petitioner for refund, considering the documentary evidence produced (which were produced on April 18, 2007) and thereafter on the basis of the said documents order of remand has been passed by the Department, however the Department failed and the order dated August 1, 2008 sanctioning the refund came to be confirmed and thereafter the actual refund has been paid by a cheque on September 8, 2009. Considering the aforesaid facts and circumstances of the case when the petitioner produced all the supporting documents such as cost accountant certificate, statement of bills and process form etc., to prove that there was no unjust enrichment, which came to be accepted by the department while passing the order dated August 1, 2008, it appears, that the applicant shall be entitled to interest at least from June, 2007 after deducting and/or granting some reasonable time to the original adjudicationing authority to consider the refund claim of the petitioner on remand order. As stated above, as such while passing the order dated July 17, 2007 the original adjudicating authority--Assistant Commissioner as such did not consider the supporting documentary evidence produced by the petitioner on April 18, 2007 and therefore, the Commissioner by passing the order dated February 6, 2008 remanded the matter to the original adjudicating authority, for re-examining the whole issue, after proper scrutiny of all the documents submitted by the petitioner. Therefore, we are of the opinion that the petitioner shall be entitled to interest on the refund amount at least from July 1, 2007 and therefore, the present petition is required to be allowed to

the aforesaid extent by modifying the impugned order passed by the authority. In view of the above and for the reasons stated above, the petition succeeds in part and it is held that the petitioner shall be entitled to the interest on the amount of refund, i.e., Rs. 5,79,968 u/s 11B of the Act with effect from June 1, 2007 till September 8, 2009 (till actual date of refund amount) and consequently the impugned order passed by respondent No. 2 dated November 19, 2010 impugned in the present petition is modified to the aforesaid extent. The aforesaid amount of interest shall be paid to the petitioner within a period of six weeks from the date of receipt of present order and/or production of certified copy of the present order. Rule is made absolute to the aforesaid extent. No costs.