(2000) 07 DEL CK 0089

In the Delhi High Court

Case No : CW. No. 3883/91

M/s. Ajanta Tubes Ltd. and Another APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 86 DLT 674 : (2000) 56 DRJ 519 : (2001) 1 RCR(Civil) 270

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. G.L. Rawal and Mr. Rajesh Rawal, for the Appellant;

Judgement

Manmohan Sarin, J.—Rule in the petition had been issued on 2.4.1992. The petitioner by the present writ petition seeks a writ of mandamus or direction of like nature, directing the respondents to pay interest @ 17.5% on quarterly rests on the amount of Rs. 39,27,521/- from 8.10.1986 till date of its refund on 25.9.1989. The petitioner also seeks a direction for production of all the records relating to its claim for refund terminating in the order bearing No. 5-6-C-8110/86 dated 30.10.1986.

2. The brief facts are that the petitioner had, imported Prime Hot Rolled steel coils. These were cleared vide will of entry filed on 3.10.1986. It was the petitioner''s case that customs duty was livable @ 14% ad-valorem based on the benefit of exemption notification. Respondents, however, recovered excess duty amounting to Rs. 39,27,521/-. The petitioner moved an application for refund, which claim was rejected by the Assistant Collector. Petitioner filed an appeal before the Collector of Customs (Appeals). The petitioner succeeded in appeal and the respondents were directed to refund the excise duty collected in excess. Respondent had preferred second appeal before the Tribunal, which was dismissed. This was followed by SLP by the respondent before the Apex Court, which was also dismissed. Excess duty was refunded only on 25.9.1989. Petitioner in these circumstances, claims interest on the amount wrongly

withheld from 8.10.1986 to 25.9.1989.

3. Learned counsel for the petitioner submitted before me that the respondents had wrongfully recovered and withheld the amount thereby depriving the petitioner of the said sum for a period of 3 years and more. As the petitioner''s stand had been vindicated by the authorities and up to the Apex Court, the petitioner was entitled to be compensated for the period, which he has been deprived of the said amount. Learned counsel submitted that in these circumstances, writ petition would be maintainable and High Court would be fully justified in directing the payment of interest. Learned counsel for the petitioner placed reliance on Redihot Electricals Vs. Union of India and Others, and Geep Industrial Syndicate Ltd. Vs. Union of India (UOI), .

4. The aforesaid Judgments would not advance the submission of learned counsel for the petitioner in view of the decision of the Apex Court in 1998 (99) ELT 93 . The Apex Court in the said case held that a writ petition seeking the relief of payment of interest on delayed refund of the amount paid by the assessed towards customs duty, redemption fine, etc. would not be maintainable. The Court followed its decision in Suganmal Vs. State of Madhya Pradesh and Others, , laying down that a writ petition under Article 226 of the Constitution, solely praying for issue of a writ of mandamus, directing the State to refund the money, is not, ordinarily, maintainable, for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money. The Court made a distinction between a direction for refund given by way of consequential order in a case where the legality of the assessment was questioned and the cases where the petition was only for the purposes of seeking refund. The rationale was that the claim for interest was in the nature of compensation for wrongful retention of money that was collected and not based on any legal right. It may be noted that it is only after the insertion of Section 27-A in the Customs Act that the assessed now has a statutory right to claim interest on the delayed refund.

In view of the foregoing decision of the Supreme Court, the present writ petition, seeking a direction for payment of interest on delayed refund, would not be maintainable. The writ petition is dismissed as not maintainable. It would be open to the petitioner to seek his remedy in the appropriate civil forum, as admissible at law.

