**(2002) 10 GUJ CK 0020**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 10034 of 2002

Nijrang Print Pack Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

**Date of Decision :** 28-10-2002

**Acts Referred:**

**Citation :** (2005) 184 ELT 11

**Hon'ble Judges :** D.A. Mehta, J;Anil R. Dave, J

**Bench :** Division Bench

**Advocate :** R.S. Dinkar, for the Appellant; D.N. Patel, SCGSC, for the Respondent

**Final Decision :** Allowed

## Judgement

A.R. Dave, J.—Grievance which the petitioner-Company has ventilated in this petition is with regard to non-payment of refund of Rs. 2,27,964/- by the respondents. Facts giving rise to the present petition in a nutshell are as under.

2. The petitioner was directed to pay a sum of Rs. 2,27,964/- by way of duty by the Assistant Commissioner of Central Excise, Division-IV. Being aggrieved by the said order, the petitioner had filed an appeal before the Commissioner (Appeals). The said appeal filed by the petitioner had been rejected by an order dated 30th March, 1993. Being aggrieved by the said order passed in Appeal, the petitioner had filed an appeal before the CEGAT. The CEGAT quashed and set aside the order passed by the Commissioner (Appeals) dated 30th March, 1993 by its order dated 11th April, 1998. As the petitioner had finally succeeded, the amount of Rs. 2,27,964/-, which was paid by the petitioner in pursuance of the demand made by the Assistant Commissioner of Central Excise, Division-IV ought to have been refunded to the petitioner.

3. As the said amount had not been refunded to the petitioner, the petitioner was constrained to file an application for claiming the said refund on 29th July, 1999. The said application, praying for refund had been rejected on 29th October, 1999 by the Deputy Commissioner of Central Excise, Division-IV on the ground that

the petitioner had to make payment to the respondent authorities as there was another demand pending against the petitioner.

4. Being aggrieved by the said adjustment, the petitioner filed an appeal before the Commissioner (Appeals) on 17th January, 2000.

5. During the pendency of the appeal before the Commissioner (Appeals), the amount which was demanded by the respondent authorities and the demand against which the refund was to be adjusted was held to he bad by the Commissioner (Appeals) under his order dated 6th November, 2000. Thus, it was ultimately held that even the amount which was demanded by the respondent authorities in respect of another period had been rejected and, therefore, no amount was payable by the petitioner to the respondent authorities.

6. In spite of the above referred clear position, the appeal filed by the petitioner against the order dated 29th October, 1999 passed by the Deputy Commissioner of Central Excise, Division-IV had been rejected by an order dated 21st August, 2002.

7. The petitioner has been aggrieved by the order dated 21st August, 2002 because, according to the petitioner, no amount was payable by the petitioner and, therefore, the amount of refund ought to have been paid to the petitioner by the respondent authorities. Learned advocate Shri Dinker appearing for the petitioner has submitted that for no rhyme or reason, the amount of refund is not being paid to the petitioner, and therefore the respondent authorities should be directed to pay the same with interest thereon.

8. Learned Senior Central Government Standing Counsel Shri D.N. Patel appearing for the respondents could not dispute the above referred position. However, he tried to support the order dated 21st August, 2002.

9. In our opinion, when the amount of refund had become due and payable to the petitioner and especially when the said amount of refund was not liable to be adjusted against any another demand, the amount of refund ought to have been paid to the petitioner without any delay.

10. In the circumstances, we direct the respondent authorities to make payment of the amount of refund and interest thereon as prayed for in the petition. We direct that the respondent authorities shall pay interest at the rate of 15% on the amount of refund with effect from 29th July, 1999 to 10th May, 2001 and interest at the rate of 9% from 11th May, 2001 till the date of payment of the refund to the petitioner. The amount of refund along with interest thereon shall be paid to the petitioner within a period of six weeks from the date of receipt of this writ or a true copy of this order by the concerned respondent.

11. The petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

 