
(1999) 10 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 6283 of 1998 and W.M.P. No. 9694 of 1998

Oswal Agro Mills Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:

Customs Act, 1962 — Section 129E

Citation : (2000) 68 ECC 251 : (1999) 115 ELT 302

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Habibullah Badsha for K. Ilias Ali, for the Appellant; M.T. Arunan, A.C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—In this writ petition, the petitioner prays for the issue of a Writ of Mandamus directing the respondents to refund the

sum of Rs. 12.5 lakhs deposited with the second respondent u/s 129E of the Customs Act, and also to release the Bank Guarantee of Rs. 12.5 lakhs.

2. This Court ordered notice of motion on 29-4-1998. The respondents have been served and they have also entered appearance through Mr.

M.T. Arunan, learned Additional Central Government Standing Counsel. On 11-10-1999, when the above writ petition was listed, on behalf of

Mr. M.T. Arunan, learned Additional Central Government Standing Counsel, a request was made that the matter may be posted for orders on 13-

10-1999. Accordingly, the matter is listed today. On behalf of respondents, the third respondent has filed a counter affidavit.

3. Heard Mr. Habibullah Badsha, learned Senior Counsel appearing for Mr. K. Ilias

All for the petitioner and Mr. M.T. Arunan, learned

Additional Central Government Standing Counsel appearing for the respondents.

4. In terms of the order passed by the Honourable Supreme Court, the writ petitioner deposited a sum of Rs. 12.5 lakhs and furnished a Bank

Guarantee for equal sum u/s 129E of the Customs Act. Thereafter, the appeal preferred by the writ petitioner was taken up by the Customs,

Excise & Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "CEGAT") and final order was passed on 29-2-1997 allowing

the appeal preferred by the writ petitioner herein and setting aside the order passed by the Collector of Customs, immediately, thereafter, the writ

petitioner approached the respondents for release of the Bank Guarantee as well as for refund of the sum of Rs. 12.5 lakhs deposited by the writ

petitioner by way of pre-deposit. But, there was no reply.

5. Thereafter, the respondents moved the CEGAT for a reference, which application has been rejected as time barred by order dated 27-10-

1997. Concedingly, neither the order passed by the CEGAT in the appeal, nor the rejection of reference by the CEGAT had been challenged

before any forum and the same has reached finality.

6. Even there afterwards, the petitioner had been approaching the respondents for refund of the sum of Rs. 12.5 lakhs as well as for return of the

Bank Guarantee, but there was no reply.

7. On 19-8-1997, the writ petitioner caused a legal notice to the respondents, which had been acknowledged. Once again on 20th of January,

1998, another legal notice caused by the writ petitioner calling upon the respondents to refund the said amount of Rs. 12.5 lakhs as well as to

return the Bank Guarantee. For those two legal notices also, there was no reply and the respondents have been keeping silent.

8. When once the appeal is allowed by the CEGAT, there is no justification or reason, or rhyme, for the respondents to retain the sum of Rs. 12.5

lakhs and without returning the Bank Guarantee and that too for an indefinite period. The respondents did not have courtesy even to send a reply,

nor even an acknowledgement stating that the petitioner's request is under consideration. No action has been taken by the respondents till 28-4-

1998, when the writ petition was filed.

9. Even after filing of the writ petition and this Court ordering notice of motion on 29-4-1998 and till this date, the respondents had not cared to

pass orders on the request made by the petitioner, nor the respondents have chosen to correspond with the petitioner.

10. As already pointed out since the proceedings have become final, the petitioner has succeeded, the respondents have no authority to retain the

said amount, after the disposal of the Appeal by the CEGAT on 29-2-1997, which had been communicated to either parties. If the respondents

have acted on 4-3-1997 promptly and refunded the amount immediately after 4-3-1997 or immediately after the rejection of their application for

reference, the petitioner would not have caused the legal notice and would not have been made to come before this Court.

11. The counter affidavit has been filed, wherein the above facts have been admitted and there is no dispute with respect to the liability of the

respondents to refund the said amount as well as to return the Bank Guarantee. The respondents also have not challenged the maintainability of the

writ petition, nor they have raised any objection with respect to the demand made by the petitioner. There is no answer whatsoever by the

respondents for keeping the substantial amount with them without any cause much less just cause or reason. The petitioner had been awaiting for a

considerable period and thereafter only come before this Court.

12. When once the order has been set aside by the CEGAT, it follows automatically that the respondents could have sent a advise intimating the

refund of the pre-deposit made by the petitioner, which the respondents had not also chosen to do. Thus, at every stage, the respondents had been

adopting the delaying tactics. The action of the respondents seems to be nothing but arbitrary silence and high handed action. The respondents are

on the assumption that they are above the rule of law, which course cannot be appreciated by this Court.

13. In the circumstances, the Writ Petition is allowed. The respondents are directed to refund the sum of Rs. 12.5 lakhs and to return the Bank

Guarantee for the value of Rs. 12.5 lakhs furnished to the petitioner within six weeks from today with interest at 15% per annum from 27-10-1997

on which date, the reference application submitted by the respondents came to be rejected.

14. The Writ Petition is allowed in the above terms. Consequently, W.M.P. No. 9694 of 1999 is closed. The respondents shall pay a sum of Rs. 10,000/- as costs.