(2003) 04 MAD CK 0075

In the Madras High Court

Case No : Writ Petition No. 5447 of 2003 and WPMP. No''s. 8360 and 8361 of 2003

S. Prem Giri APPELLANT

Vs

The Commissioner of Customs and The Customs Excise and Gold (Control) Appellate Tribunal, South Zone Bench RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Citation : (2003) 155 ELT 235

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M. Ajmeer Ali, for the Appellant; A. Kalaisevan, ACGSC for Respondent-1 and S.M. Deenadayalan, ACGSC for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The petitioner has prayed for issuing Writ of Certiorarified Mandamus to quash the order of the second respondent dated

24.9.2002 and directing the first respondent to pay the interest of Rs. 1,47,798/-.

2. The facts giving rise to the present writ petition are as follows:

On 27.11.1989 the authorities under the respondent had seized Indian Currency Notes worth Rs. 4,25,000/-. Subsequently, the Commissioner of

Customs passed an order for confiscation of gold bars and currency notes and imposed a penalty of Rs. 1,00,000/-. The petitioner carried the

matter in appeal. By order dated 17.1.2000, the Appellate Tribunal while upholding the direction regarding confiscation of gold bar and imposition

of penalty of Rs. 1,00,00/-, directed to return the currency notes worth of Rs. 4,25,000/-. During pendency of the appeal, the petitioner had made a pre-deposit of Rs. 25,000/-. Subsequently the petitioner filed Miscellaneous Application No. 104/2000 in C.A. No. 220/91 before the Tribunal

praying for implementation of the final order dated 17.1.2000 and to return the amount along with the interest at the rate of 24% from the date of

seizure. On 23.11.2000, the Appellate Tribunal passed an order directing the authorities to ""return the amount of Rs. 4,25,000/- along with interest

@ 12% per annum as has been directed in the cited judgment within 1 month from the date of receipt of this order"". Subsequently, the Department

after adjusting the pre-deposit amount of Rs. 25,000/- towards penalty and further adjusting the balance sum of Rs. 75,000/- payable towards

penalty, refunded a sum of Rs. 3,50,000/- along with a further sum of Rs. 33,278/- towards interest. Subsequently a petition was filed by the

petitioner contending that the interest should be calculated at the rate of 12% per annum from the date of seizure of the currency notes and not

from the date when the amount was deposited by the Department in the treasury. The aforesaid contention was rejected by the Tribunal on

24.9.2002, which held that the interest amount has been rightly calculated.

3. During pendency of the writ petition, petitions to amend the prayer in the writ petition and to implead the proposed second respondent has been

filed and they are allowed.

4. A perusal of various orders indicate that at the time of dismissal of the appeal there was a direction for refund of Rs. 4,50,000/-, but there was

no specific direction that such amount should be refunded with interest from the date of seizure. However, on the basis of the subsequent

application, the Tribunal had directed for payment of the amount along with interest at the rate of 12% per annum. It must be construed that at least

from the date of disposal of the appeal interest on Rs. 4,25,000/- should be calculated. The liability to pay the amount arose on the date when the

appellate order was passed if not earlier and there was no justification for the respondents to retain the money thereafter.

5. Learned counsel for the petitioner has submitted that interest should be calculated from the date of deposit had been made. For the aforesaid

reason, he placed reliance upon the decision reported in Kuil Fireworks Industries Vs. Collector of Central Excise and another, . That case related

to the case of return of pre-deposit made and is not comparable to the present case, where the amount has been seized and directed to be

confiscated. The right to get back the money only flows from the appellate order. Therefore, according to me, the interest is payable from the date

of the appellate order.

6. For the aforesaid reasons, the writ petition is allowed in part and the respondents are directed to calculate the interest at the rate of 12% per

annum on Rs. 3,50,000/- from the date of disposal of the appeal till the date of payment order and if any further amount is found due, such amount

should be paid within a period of one month from the date of the present order. No costs. Consequently, the connected miscellaneous petitions are

closed.