(2016) 07 GUJ CK 0030

In the Gujarat High Court

Case No : Misc. Civil Application (For Direction) No. 2057 of 2015 in Special Civil Application No. 3041 of 2013

Shreejikrupa Spinners Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Citation : (2016) 340 ELT 126

Hon'ble Judges : Harsha Devani and Sonia Gokani, JJ.

Bench : Division Bench

Advocate : Shri Bharat T. Rao, Advocate, for the Applicant; S/Shri Devang Vyas and R.J. Oza, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Harsha Devani, J. (Oral)—By this application, the applicant seeks a direction to the opponents to refund the amount of Rs. 2,91,000/- deposited by it on 26th August, 2014 with the Assistant Commissioner, Central Excise and Customs, Ankleshwar pursuant to the order dated 6th December, 2013 passed by this Court in Special Civil Application No. 3041/2013 along with interest at the rate of 18% per annum forthwith.

2. Heard Mr. B.T. Rao, learned advocate for the applicant and Mr. Devang Vyas, learned advocate for the Opponent No. 1.

3. The record reveals that on 6th December, 2013, this Court, while issuing rule on the petition, had passed an order in the following terms :-

"Rule returnable on 22nd January, 2014.

Shri R.J. Oza, learned counsel waives service of notice of Rule on behalf of the respondents.

Heard Shri Bharat Rao, learned advocate appearing on behalf of the petitioner and Shri R.J. Oza, learned counsel appearing on behalf of the respondents on interim relief. Shri Bharat Rao, learned counsel appearing on behalf of the petitioner has stated at the Bar under the instructions from his client that without prejudice to his rights and contentions in the petition and to show his bona fides, petitioner shall deposit 30% of the amount due and payable with the Department within a period of two weeks from today and shall file undertaking that till the petition is heard, the petitioner shall not transfer the property in question in any manner whatsoever and an undertaking to that effect shall also be filed within a period of two weeks from today with a copy to learned counsel appearing on behalf of the respondents.

Under the circumstances, on deposit of 30% of the amount due and payable under the impugned notice and on filing undertaking that till final disposal of the main petition, the petitioner shall not transfer, alienate the property in question in any manner whatsoever, there shall not be any further recovery of the amount due and payable under the impugned recovery/demand notice and the respondent shall not suspend the license of the petitioner only on this ground. It goes without saying that the aforesaid deposit of 30% of the amount due and payable shall be without prejudice to the rights and contentions of the respective parties in the main petition.

Direct Service is permitted."

4. On a plain reading of the above order, it is evident that the amount deposited in terms of the said order was without prejudice to the rights and contentions of the parties. Special Civil Application No. 3041/2013 has been decided by this Court by a judgment and order dated 26th September, 2014 [2016 (332) E.L.T. 601 (Guj.)] whereby the Court has allowed the petition by inter alia setting aside the demand raised against the petitioner in respect of the outstanding dues of GSL (India) Limited. Having regard to the fact that the amount of Rs. 2,91,000/- deposited by the petitioner pursuant to the above order dated 6th December, 2013 was towards the demand raised from the petitioner in respect of the outstanding dues of GSL (India) Limited, as a necessary corollary, such amount is required to be returned to the petitioner in the light of the judgment and order dated 26th September, 2014. Insofar as the demand for interest at the rate of 18% per annum of such amount is concerned, this Court while passing the order dated 6th December, 2013 had not specified that the petitioner would be entitled to refund of the amount with interest if it succeeded in the petition. The amount deposited by the petitioner is pursuant to an interim order passed by the Court and is not in the nature of payment of excise duty and hence, the provisions of the Central Excise Act for refund would not be applicable. Consequently, the provisions of Section 11BB of the Central Excise Act which provides for interest on delayed refund, would not be applicable. It is settled legal position that in the absence of a statutory provision entitling the assessee to interest, a mandamus cannot be issued to the Revenue to pay interest. Therefore, though the petitioner has claimed interest at the rate of 18%, the same is not backed by any statutory provision and hence, the relief prayed in the application to that extent cannot be

granted.

5. For the foregoing reasons, the application succeeds and is accordingly allowed to the following extent. The opponents are directed to forthwith refund the amount of Rs. 2,91,000/- deposited by the applicant on 26th August, 2014 with the Assistant Commissioner, Central Excise and Customs, Ankleshwar. It is clarified that in case such amount is not paid to the petitioner within a period of three months from today, the opponents shall be liable to pay interest at the rate of 18% to the applicant for the subsequent period till the date of actual payment.

