
(2006) 11 DEL CK 0006
In the Delhi High Court
Case No : Writ Petition (C) 4793 of 2003

Surinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-11-2006

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11BB, 37
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 129DD, 142, 142(1), 27, 27A
Customs and Central Excise Duties (Drawback) Rules, 1971 — Rule 14, 2
Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 — Rule 16A
Income Tax Act, 1961 — Section 244, 244A

Citation : (2006) 113 ECC 358 : (2006) 139 ECR 358 : (2006) 204 ELT 534

Hon'ble Judges : Vikramajit Sen, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : R. Santhanam and R.C. Gupta, for the Appellant; S.K. Dubey, for the Respondent

Judgement

S. Muralidhar, J.—This writ petition challenges an order dated 12.6.2003 passed by the Assistant Commissioner of Customs (Refund) rejecting the claim for refund of the drawback recovered from the petitioner to the extent of its customs component of Rs. 46,06,890. The petitioner's claim for interest at 24% on the entire amount of the drawback recovered from the petitioner (on both excise and customs components) was also rejected by the impugned order.

Background Facts

2. The petitioner is the sole proprietor of M/s. Rangi International and is carrying on the business of manufacture and export of readymade garments. During 1991-1993, the petitioner exported garments to M/s. Pinky Originals Inc. and M/s. Indo American Design Workshop Inc. USA valued at Rs. 45.75 crores, in respect of which the petitioner was allowed duty drawback. However, the petitioner was not able to realise export proceeds to the extent of Rs. 11.73 crores since the foreign buyers were declared bankrupt. Consequently, the

petitioner applied to the Reserve Bank of India (RBI) to write off the amount, as there was no possibility of Realizing the aforementioned export proceeds. The RBI granted the petitioner the permission subject to certain terms which the petitioner claims to have complied with.

3. By a notice dated 17.11.1997, the Customs Authorities in Delhi (Air Cargo Unit), required the petitioner to surrender/repay the duty drawback allowed earlier to the extent of the amount of sale proceeds not realised. After receiving the reply of the petitioner, the Assistant Commissioner of Customs by an order dated 1.7.1998 confirmed the demand of Rs. 99,69,684 towards principal, along with interest at the rate of 24% per annum amounting to Rs. 71,73,851, aggregating to Rs. 1,71,37,545/-. It is not in dispute that the interest component has been worked out at 24 per cent per annum for a three-year period between 26.5.1995 and 26.5.1998.

4. Initially the said order dated 1.7.1998 was challenged by the petitioner in this Court by way of a writ petition under Article 226 of the Constitution. One of the contentions raised in the writ petition was that the order of the Assistant Collector of Customs was entirely without jurisdiction. Also, it was contended that since the Customs and Central Excise Duties Drawback Rules, 1995 (?Duty Drawback Rules 1995?) were not retrospective, the demand for refund of the duty drawback made in exercise of Rule 16 A thereof was unsustainable in law. On 7.8.1998 this Court dismissed the writ petition granting the petitioner liberty to raise this plea before the Appellate Authority.

5. The petitioner?s appeal was dismissed by the Commissioner of Custom (Appeals) by an order dated 21.9.1998. The petitioner?s contention that Rule 16A of the Duty Drawback Rules 1995 was not retrospective was rejected. It was further held that ?Rule 16A has to be harmoniously construed with the provisions of Section 75 of Customs Act, 1962, and Therefore, recoveries can be effected in respect of exports made earlier and where foreign exchange has not been realised.? Further, it was held that the drawback was not limited to customs duty but included duty on excisable goods as well. Against this order the petitioner preferred a revision petition u/s 129DD of the Customs Act, 1962 to the central government.

6. In the meanwhile, faced with an order of detention of his export consignments, passed by the Assistant Commissioner Customs (Drawback) u/s 142(1) of the Customs Act, 1962, the petitioner deposited the entire sum of drawback together with interest i.e. Rs. 99,69,684 towards principal and Rs. 71,73,851 towards interest aggregating to Rs. 1,71,37,545 by means of three challans dated 22.7.1998 (Rs. 25 lakhs), 6.11.1998 (Rs. 1.25 crores) and 27.1.1999 (Rs. 21,37,545).

7. The revision petition filed by the petitioner was disposed of by an order dated 11.6.1999 of the Joint Secretary, Government of India, Department of Revenue. The central government in the said order confined the issue to the recovery of

the central excise component of the drawback in the event of non-realisation of export proceeds. Following the decisions of the Hon'ble Supreme Court in *The Cannanore Spinning and Weaving Mills Ltd. Vs. Collector of Customs and Central Excise Cochin and Others*, and *Amba Lal v. Union of India* `AIR 1961 SC 264 it was held that Rule 16A of the Duty Drawback Rules 1995 could not be retrospective and that "all payments made towards the Central Excise component of drawback before 6.12.1995 cannot be recovered even though the export proceeds have not been realised." Consequently, the central government "set aside the orders passed by the lower authorities" and allowed the "Revision Application with consequential relief."

8. The above order dated 11.6.1999 in revision was challenged by the government by way of a SLP in Hon'ble Supreme Court which, after grant of leave, was registered as Civil Appeal No. 3743 of 2000. However, the operation of the order dated 11.6.1999 was not stayed. On 21.2.2003 the Hon'ble Supreme Court dismissed the appeal on the ground that there was no satisfactory Explanation for delay in filing the appeal. While dismissing the appeal, the leave earlier granted was revoked and the SLP was dismissed as barred by limitation.

9. Following the dismissal of the government's special leave petition, the petitioner wrote to the Respondents on 30.5.2003 requesting that the entire amount of Rs. 1,71,37,535 paid by him pursuant to the order of adjudication dated 1.7.1998 and the order in appeal dated 21.9.1998 should be refunded together with the interest at 24% from the date of deposit till the date of refund in view of the order in revision dated 11.6.1999 of the central government.

The impugned Order

10. On 12.6.2003, the Respondent Assistant Commissioner (Refund) passed the impugned order holding that the application was essentially for consequential relief arising out of the order dated 11.6.1999 passed in the Revision Application. It was Therefore held:

The consequential relief is to allow the central excise portion of the drawback and recovering the custom portion of the drawback. The provisions of Section 75 of the Act have been held as applicable to the recovery of the amount of Custom component of drawback where export proceeds have not been realized by restricting the issue in the instant case to the central excise component of drawback only. Even the claimants have agreed to the applicability of Section 75 of the Act for the recovery of custom component as shown in para 4(8) of the said order. Thus only the amount pertaining to the central excise component of drawback deposited by the claimants in pursuance of the said impugned order No. 3/98 dated 9.6.98 is liable to be refunded to them as the consequential relief in terms of the order of the Joint Secretary in revision application.

Significantly, in the impugned order it was held that "the amount deposited by the petitioner in the sum of Rs. 1,71,37,545/-, being the amount pertaining to

drawback, the provisions of Section 27 of the Act regarding unjust enrichment are not attracted to this case.? The impugned order held that an amount of Rs. 1,25,30,645/- being the amount of deposit pertaining to the central excise component of drawback and the corresponding interest, was duly refundable to the petitioner.

11. As regards the claim for interest, it was held that since Section 75A of the Customs Act, 1962 was inserted only on 26.5.1995 with prospective effect, it could not be invoked by the petitioner. Therefore, the claim for interest was rejected. The operative portion of the order dated 12.6.2003 reads as follows:

7. In view of the above discussion & findings I hereby order the following as consequential relief as required vide the GOI Order dated 11.6.1999:

i) The refund of Rs. 1,25,30,645/-(One Crore Twenty Five Lakh, Thirty Thousand, Six Hundred and Forty Five) to M/s. Rangi International, C-58/1, Okhla Industrial Area, Phase-II, New Delhi is hereby sanctioned to be paid by cheque No. 565833 dated 12.6.03(PNB) issued in their favor. The balance claim of Rs. 46,06,890/- is hereby rejected.

ii) The claim for interest on the amount of deposit is hereby rejected.

Interim Order of this Court

12. On 8.12.2003, a Division Bench of this Court passed the following interim order while issuing Rule DB:

Rule D.B.

Leave granted to apply for early hearing.

Having heard learned Counsel for the parties for some time and bearing in mind the fact that an amount of Rs. 71,73,851/- had been charged from and paid by the petitioner as interest @ 24%p.a., in terms of order dated 1 July 1998, which had been set aside by the Government of India, and respondent's SLP against the said order was dismissed by the Supreme Court on 21 January 2003, we are of the view that the balance amount of interest cannot be withheld by the respondents under any circumstances. Accordingly, we direct the respondents to refund to the petitioner the balance amount recovered as interest (Rs.71,73,851/- minus Rs. 52,45,557/-) forthwith.

To ensure compliance, a copy of the order be issued dusty to learned Counsel for the respondents, under the signatures of the Court Master of this Court.

Issues for determination

13. In other words, the petitioner was directed to be refunded the interest charged from the petitioner on the customs component which worked out to Rs. 19,28,294/-. We are informed that this order has been complied with. Therefore, what remains to be considered is whether the petitioner is entitled to the following reliefs which were declined by the impugned order dated 12.6.2003:

(a) Refund of the customs component of the duty drawback of Rs. 46,06,890/-; and

(b) Interest @ 24% p.a. on the entire sum of Rs. 1,71,37,545/-, from the date of its deposit till the date of its refund.

Submissions of Counsel

14. Mr.R.Santhanam, learned Counsel for the petitioner submits that the order dated 11.6.1999 unambiguously sets aside the order in original dated 1.7.1998 and the order dated 21.9.1998 of the appellate authority in toto with consequential reliefs. Therefore, the entire sum of Rs. 1,71,37,535/- was liable to be refunded and on the same terms on which it was collected i.e. with interest at 24% p.a. from the date of deposit till the date of refund. He submitted that after the order in revision, which had become final, there was no warrant for splitting up the drawback amount to be refunded to the petitioner into the customs component and excise component and grant refund only of the excise component. If while recovering the drawback amount from the petitioner both the components were collected with interest, then on its refund the entirety of the said amount with the same rate of interest was required to be repaid. In support of this submission he relied on the decision of the Hon^{ble} Supreme Court in *Moti Laminates (P) Ltd. Vs. Union of India (UOI)*, .

15. Mr. Santhanam further contended that at the relevant time when the exports were made i.e.1991-1993, Rule 16A of the Duty Drawback Rules 1995 (which provided for refund of duty drawback by the exported in the event of non-realisation of export proceeds) was not on the statute book since it came into effect only from 6.12.1995. Prior to this, there was the Customs and Central Excise Duties Drawback Rules 1971 (Duty Drawback Rules 1971) which contained no such provision. These were composite rules that covered both the customs and excise components and were relatable to Section 75 of the Customs Act, 1962 and Section 37 of the Central Excises Act, 1944 respectively. Therefore, even the customs component could not be recovered and was required to be refunded to the petitioner on the same terms as the excise component.

16. As regards the petitioner's claim for interest, learned Counsel submits that when the drawback amounts were sought to be recovered from the petitioner, interest was charged @ 24% p.a. in terms of Section 28AA of the Customs Act, 1962. Even if there was no specific provision for payment of interest on delayed refund of drawback, this Court should in equity apply the same principle as in Section 27A of the Customs Act, 1962 and Section 11BB of the Central Excises Act, 1944 both of which deal with interest on delayed refunds of duties wrongly collected. He placed reliance on the decisions in *Prince Khadi Woollen Handloom Production Coop. Industrial Society Ltd. Vs. Collector of Central Excise and Another*, , *Kuil Fireworks Industries Vs. Collector of Central Excise and another*, , *CCE v. ITC* 2005 (179) ELT 15 (SC) , *Sandvik Asia Ltd. Vs. Commissioner of*

Income Tax-I, Pune and Others, , and Tata Infotech Ltd. Vs. Collector of Customs, and Hello Minerals Water (P) Ltd. Vs. Union of India (UOI), .

17. Mr.S.K.Dubey, the learned Counsel for the Respondents, first refers to the counter affidavit filed by the Respondents wherein it is pointed out that the relevant guidelines governing grant of drawback on readymade garments during the relevant period clearly indicate that the rate of drawback was a combination of the customs and excise components. The applicable rate of drawback during the period between 1.1.1991 to 24.10.1991 was 9% FOB value of which 4% was allocated to customs and 5% to central excise; from 25.10.1991 till 31.5.1992 it was 7% of which 2% was allocated to customs and 5% to central excise; from 1.6.1992 till 31.5.1993 it was 8% of which 2% was allocated to customs and 6% to central excise and from 1.6.1993 till 31.5.1994 it was 7.5% of which 2% was allocated to customs and 5.5% to central excise. It is accordingly submitted that the splitting up of the drawback into the customs component and excise component was not unusual and this has been clearly understood by the exporters themselves.

18. Mr.Dubey submits that, in the above background, the order of the Central Government in revision has rightly restricted the claim only to the refund of the excise component of the drawback as is apparent from the reading of the whole order. He further submits that the petitioner was fully aware of this legal position and Therefore, before the first Appellate Authority as well as the Central Government, the petitioner himself had pleaded only for the refund of the excise component of the drawback.

19. Mr. Dubey relies on the second proviso to Section 75 of the Customs Act 1975 which was inserted by Act No. 49 of 1991 with effect from 27.12.1991, and submits that if after drawback has been allowed, sale proceeds in respect of such goods are not received by the exporter in India such drawback ?shall be deemed never to have been allowed.? Therefore, the legislative intent was clear that the customs duty component is not capable of being refunded. He further relied on Rule 14 of the Duty Drawback Rules 1971 which permits the customs authorities to demand from an assessed drawback that has been paid erroneously or in excess of what the assessed is entitled to. Accordingly he submits that even if it were to be held that Rule 16A is only prospective, Rule 14 of the Duty Drawback Rules 1971 read with the second proviso to Section 75 did not permit the refund of the customs component. He relies on the decision in Union of India and Others Vs. M/s. Orient Enterprises and Another, to contend that the claim for interest was in the nature of compensation and a writ petition seeking the payment of interest would not be maintainable.

Claim for refund of the Customs Component of the drawback

20. We will first take up the first of the two issues, i.e., whether the petitioner is entitled to the refund of the customs component of the duty drawback in the sum of Rs. 46,06,890/-. The impugned order has rejected this claim on the ground

that the order in revision restricts the claim only to the refund of the excise component. This appears to be correct. It was for this reason that the order in revision dated 11.6.1999 proceeds to examine the provision under which such repayment of the excise component of the drawback was demanded.

21. It requires to be noticed that the term 'drawback' has been defined in Rule 2 (a) of the Duty Drawback Rules 1971 as well as the Duty Drawback Rules 1995 to mean 'the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods.' Thus it comprises both the excise and customs components. This is what is reflected in the Guidelines governing duty drawback which have been referred to in the counter affidavit of the respondents. However, the treatment of a situation where, after availing of drawback, the exporter is unable to realise the export proceeds, is different in respect of the two components. We may first consider the excise component.

22. It is an admitted position that prior to the Duty Drawback Rules 1995, there was no provision either in the Central Excises Act 1944 or in the Duty Drawback Rules 1971 which stipulated that if the export proceeds were not recovered, then the corresponding excise duty drawback would become refundable by the exporter. Section 37 of the Central Excises Act 1944 is a general provision encapsulating the rule making power of the central government and nothing more. Rule 14 of the Duty Drawback Rules 1971 only provided for 'repayment of erroneous or excess payment of drawback' and clearly that provision could not be pressed into service in a situation where the export proceeds were not realised. Such a provision was introduced in the context of excise duty for the first time only by way of Rule 16 A of the Duty Drawback Rules 1995 with effect from 6.12.1995.

23. The relevant portion of Rule 16 A reads as under:

16A. Recovery of amount of Drawback where export proceeds not realised.-(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall be recovered in the manner specified below:

Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

(2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such

evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within sixty days of the receipt of the said order:

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds:

There being no corresponding earlier substantive provision in the Central Excises Act 1944, Rule 16 A could obviously not be made retrospective to apply even to those exports, like those in the instant case, which were made prior to 6.12.1995. Therefore, in this respect, we are in complete agreement with the order dated 11.6.1999 passed by the Central Government in the petitioner's revision petition. The said order has attained finality with the Hon'ble Supreme Court dismissing the SLP filed by the government. The impugned order has also rightly directed the refund to the petitioner of the excise component of the drawback as well as the interest charged thereon.

24. As regards the customs component, it requires to be noticed that the second proviso to Section 75 of the Customs Act 1975 existed in the statute book from 1991 onwards and the provision reads as under:

Section 75. Drawback on imported materials used in the manufacture of goods which are exported.-(1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made u/s 51 by the proper officer, or being goods entered for export by post u/s 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under Sub-section (2).

Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under Sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out

any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), such drawback shall be deemed never to have been allowed and the Central Government may, by rules made under Sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.

(1A) ?.

(2) The Central Government may make rules for the purpose of carrying out the provisions of Sub-section (1) and, in particular, such rules may provide-

(a) ?.

(aa) for specifying the goods in respect of which no drawback shall be allowed;

(ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under Sub-section (1) or interest chargeable thereon;

25. Although the above substantive provision was introduced by the Finance Act 1991 with effect from 27.12.1991, there was no corresponding provision in the Duty Drawback Rules 1971. The department would Therefore have to fall back on Section 142(1) of the Customs Act 1962 which prescribes the procedure for ? recovery of sums due to government.? When ultimately Rule 16 A was introduced it was only consistent with the existing provisions in the Customs Act 1962 for recovery of drawback where export proceeds were not realised. In other words, when Rule 16 A was introduced in the Duty Drawback Rules 1995, no new provision was being introduced substantively for the first time concerning the customs duty component whereas it was as far the excise duty component was concerned.

26. The resultant position was after the introduction of the second proviso to Section 75 Customs Act 1975 with effect from 27.12.1991, it was not open to an exporter to claim ignorance of the law that if the export proceeds were not recovered, the corresponding customs duty component of the drawback would have to be refunded. This is made clear by the language of the second proviso which unambiguously declares that ?such drawback shall be deemed never to have been allowed.? Even without the aid of Rule 16 A, the government could have taken the aid of Section 142 of the Customs Act, 1962 to recover the customs component of the drawback corresponding to the unrealized export proceeds. The decision in *Moti Laminates* (supra) relied upon by the petitioner is unhelpful to him since it does not deal with a provision similar to the second proviso to Section 75.

27. The records show that the petitioner himself understood this legal position while making the claims for refund of the drawback. Before the Appellate Authority, as is set out in the order dated 21.9.1998, the petitioner took the following stand:

3. There was no condition of realisation of foreign exchange under the earlier Drawback Rules 1971, and further unlike Section 75 of the Customs Act, the Central Excise Act, did not impose any condition of realisation of export proceeds.

Rule 16A of the Drawback Rules, 1995, should be read as applicable only to drawback claimed on Customs duties paid by the exporter on the value of raw materials imported and used in the manufacture of the goods exported and should not read as applicable to excise duty paid under the Central Excise Act, 1944.

28. Also before the central government in the revision petition the petitioner maintained this distinction between his claims for refund of the excise and customs components. The petitioner's pleas as recorded in the order dated 11.6.1999 of the central government read as under:

(6) Rule 16A of the Drawback Rules, 1995 should be read as applicable only to drawback claimed on customs duty paid by the exporter on the value of the raw materials imported and used in the manufacture of goods exported and should not be read as applicable to excise duty paid under the Excise Act. The Commissioner (Appeals) reliance on the words 'deemed to never have been allowed' appearing in Section 75 is totally wrong and out of context. They can apply, if at all, only to the rebate of duty chargeable on any imported material and not to excisable materials used in the manufacture of such goods in India. Rule 16A has to be harmoniously construed as otherwise provision imposing the condition of realisation of sale proceeds in the case of excise duty paid on indigenous materials used in the manufacture of goods is ultra virus the Excise Act and unconstitutional;

(8) Whereas there is valid reason for recovering the drawback on the imported material, there is no justification for doing so in the case of excise duty paid on the locally produced materials used in the manufacture of the exported goods;

(10) The Commissioner (Appeals) has not touched Section 37 of the Central Excise Act. What the applicant was given was Central Excise duty and not Customs duty as drawback.

29. Clearly, this led the central government, and in our view correctly, to confine the plea to the refund of the excise duty component. The operative portion of the order dated 11.6.1999, setting aside the orders dated 1.7.1998 and 21.9.1998, has to be read in this context. It is not possible, Therefore, to accept the contention of the petitioner that the entirety of those orders were set aside by the central government. In other words, the order dated 11.6.1999 cannot be read as directing the refund of both the excise component as well as the customs

component of the drawback. For the reasons already explained, it was impermissible in law for the petitioner to have been refunded the customs duty component of the drawback.

30. The order dated 11.6.1999 has attained finality with the dismissal of the SLP filed there against .The petitioner has also accepted this order and is in fact seeking its implementation. In our view, the impugned order dated 12.6.2003 has correctly understood the scope of the order dated 11.6.1999 passed in revision by the central government and has rightly declined the refund of the customs duty component of the drawback to the petitioner.

Interest on delayed refund of drawback

31. In the light of our holding that the petitioner is not entitled to the refund of the customs duty component, the question of any payment of interest to him on the delayed refund of the said component does not arise. On the other hand the petitioner would be required to pay interest to the department on this component. In other words, the amount directed to be paid to the petitioner by this Court's order dated 8.12.2003 is now liable to be returned by him to the department. However, in the light of what we proceed to hold, this can be adjusted against the amount payable to him by the respondents by way of interest on the delayed refund to him of the excise duty component.

32. The only issue that survives for consideration is whether the petitioner is entitled to any interest for the delayed refund of the excise duty component along with interest. The said amount i.e. Rs. 1,25,30,645/- became finally payable to the petitioner on 11.6.1999, the date of the order of the central government in revision. This order was never stayed by the Hon'ble Supreme Court. However, the admitted position is that this amount was paid only on 12.6.2003. In our view, the petitioner would be entitled to interest for this period.

33. While there may be no specific provision concerning the payment of interest on the delayed refund of the excise duty component of drawback, we may take cue from Section 11BB of the Central Excises Act 1944 which provides for payment of interest on refund of excise duty at a rate not below 5% and not exceeding 30% as may be fixed by the Central Government, if the duty ordered to be refunded is not refunded within 3 months from the date of the application for refund. Section 11BB has been on the statute book since 26.5.1995 and Therefore on the date the amount of duty drawback became refundable to the petitioner, i.e. 11.6.1999, this provision applied. Admittedly there is no specific provision regarding payment of interest in the event of delayed refund of a drawback wrongly recovered from an assessed. A reference may however be made to Section 75A read with Section 27A of the Customs Act, 1962 (both introduced from 26.5.1995) where the Parliament appears to have acknowledged the basic principle involved even in the context of drawback. Then there are the Circulars by the Central Board of Excise and Customs (dated 2.1.2002 and 8.12.2004) which broadly acknowledge the Government's liability to pay interest

on delayed refunds.

34. Even otherwise, we are fortified in our conclusion that the petitioner is entitled to interest on the delayed refund by the decisions of the Hon^{ble} Supreme Court which recognise generally this principle. In *Prince Khadi Woollen Handloom Producing Co-operative Society (supra)*, the Hon^{ble} Supreme Court recognised the liability of the Government to refund the tax wrongly collected from the assessed even though there was no specific provision in that regard. Likewise in *Kuil Fireworks (supra)* refund was ordered to be made together with interest at 12 per cent per annum. We may mention here that the decision in *Union of India v. Orient Enterprises* does not apply here since this petition is not exclusively for the payment of interest. This petition mainly seeks the quashing of the order dated 12.6.2003 on the ground that it wrongly denies to the petitioner the customs component of the drawback. The prayer for payment of interest is a consequential prayer. Also, given the long history of this litigation, the petitioner would, in our view, be entitled to equitable relief.

35. In *Commissioner of Central Excise, Hyderabad v. I.T.C. Ltd* the Hon^{ble} Supreme Court entertained plea for interest on delayed refund beyond three months at 12 per cent per annum commencing from three months after the final disposal of dispute between the periods and till the date of payment. In the instant case, the excise component became refundable to the petitioner on 11.6.1999. Since the sum was not refunded even after three months thereafter, interest became payable on the refund.

36. In *Sandvik Asia Ltd. v. Commissioner of Income Tax*, the Hon^{ble} Supreme Court was again considering the claim of interest on a delayed refund in the context of Sections 244 and 244A of the Income Tax Act, 1961. It was held that further interest was payable by the revenue on interest which had to be repaid to the assessed. The Hon^{ble} Supreme Court on the facts of that case directed the payment of simple interest at 9 per cent per annum.

37. This Court in *Tata Infotech Ltd. v. Collector of Customs, New Delhi* referred to the Circular issued on 2.6.1998 by the Central Board of Customs and Excise which in principle recognised the liability of the Government to pay interest on delayed refund of customs and excise duties wrongly collected. It was directed that the petitioner would be entitled to interest at the rate of 12 per cent per annum on the amount of refund from the date of the passing of the order of the Tribunal in that case till the actual payment of the principal amount. In *Hello Minerals Water (P) Ltd. v. Union of India*, the High Court of Judicature at Allahabad explained that requirement of payment of interest on the delayed refund was neither a penalty nor a punishment. Interest was ordered to be paid in that case at 10 per cent per annum from the date of deposit till the date of refund.

Directions

38. Adopting the reasoning in the above judgments of the Hon^{ble} Supreme

Court and the High Courts, we hold that the petitioner would be entitled to 12 per cent per annum simple interest for the delayed refund of the central excise duty component of the drawback together with interest (i.e., Rs. 1,25,30,645/-) which was recovered from him from the date it became payable i.e. 11.6.1999 till the date of payment i.e. 12.6.2003. However, in making this payment the respondents will adjust the amount of Rs. 19,28,294 already paid to him in compliance with the order dated 8.12.2003 of this Court. Therefore, the amount payable by the respondents would be: the sum equal to 12 per cent per annum on Rs. 1,25,30,645/- for the period 11.6.1999 to 12.6.2003 minus Rs. 19,28,294. We direct the respondents to pay the petitioner this sum within a period of four weeks from today and in any event not later than December 15, 2006. It is also directed that any delay in making the payment of the sums as directed to the petitioner, would entail a further simple interest at 18 per cent per annum from December 15, 2006 till the date of payment.

39. To summarize our conclusions:

(i) The petitioner's claim for refund of the customs component of the drawback together with interest is rejected; and

(ii) The petitioner is directed to be paid interest for the delayed refund of the excise duty component at the rate of 12 per cent per annum on Rs. 1,25,30,645/-, being the Central Excise Duty component of the drawback together with interest recovered from him, for the period 11.6.1999 to 12.6.2003 after adjusting the amount already paid to him, i.e., Rs. 19,28,294/- in the manner indicated in para 35 above.

40. With the above directions, the writ petition is partly allowed and disposed of as such.