

(2004) 07 AHC CK 0097

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 953 of 2001

Tosha International Limited

APPELLANT

Vs

Commissioner of Central Excise and Customs and Another

RESPONDENT

Date of Decision : 08-07-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35E

Citation : (2004) 96 ECC 172 : (2004) 175 ELT 102

Hon'ble Judges : M. Katju, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Piyush Agrawal, for the Appellant;

Judgement

M. Katju, J.—Heard learned counsel for the parties.

2. In this case on 30.8.2001 learned counsel for the respondents was granted two weeks time to file counter affidavit. Thereafter on 3.1.03 three weeks further time was allowed to file counter affidavit. Till today no counter affidavit has been filed and we are not inclined to grant any further time to the respondents. Hence, we are treating the allegations in the petition to be correct and are disposing it of finally.

3. The petitioner is a Company registered under the Indian Companies Act having its registered office in Greater Noida. The petitioner is engaged in the manufacture and sale of black and white picture tubes for television.

4. It is alleged in paragraph 2 of the petition that the petitioner used to export these picture tubes to Dhaka in Bangladesh. The petitioner used to remove its excisable goods in Form A.R. 4 and has paid central excise duty on it for the period June 1995 to June 1997. Thereafter the petitioner claimed rebate of duty on excisable goods exported after payment of duty and the Assistant Commissioner (now Dy. Commissioner) Central Excise granted the said rebate on 16.2.1996. The petitioner made further 25 exports to Dhaka in Bangladesh for the period between 1996 to 1997, and as soon as the goods were exported the

petitioner moved an application for rebate of duty amounting to Rs. 32,84,357.86.

5. On receipt of this application a show cause notice was issued to the petitioner on 15.7.97 to which the petitioner gave a reply. However, the Assistant Commissioner (now Dy. Commissioner)) Central Excise, Noida vide order dated 30.10.98 has rejected the claim of the petitioner vide Annexure-1 to the writ petition. Aggrieved against the said order the petitioner filed an appeal before the Commissioner (Appeal) Central Excise, Ghaziabad who by his order dated 17.5.99 dismissed the appeal, vide Annexure-2 to the writ petition. Aggrieved against the said order the petitioner filed a revision u/s 35E of the Central Excise Act before the Joint Secretary, Government of India, Ministry of Finance, New Delhi who allowed its revision by means of order dated 25.10.99 vide Annexure -3 to the writ petition.

6. The petitioner has prepared a Chart which consists of a number of forms A.R.4, date of clearance, and the duty on which the petitioner claimed the rebate as well as the amount of rebate. A photostat copy of the Chart is annexed as Annexure-4 to the writ petition.

7. However, despite the revisional order dated 25.10.99 rebate as claimed by the petitioner has not yet been granted to him, despite repeated request. Copies of the correspondence between the petitioner and respondents is annexed as Annexure-5 to the writ petition.

8. It is alleged in paragraph 14 of the petition that the order of the revisional Authority dated 25.10.99 has neither been stayed nor reversed nor set aside and hence the petitioner is entitled for the refund of the amount of Rs. 32,84,357.86 alongwith interest.

9. Since no counter affidavit has been filed we are treating all these allegations to be correct.

10. We regret to note that despite the order dated 25.10.99 the refund as claimed for by the petitioner has not been granted to him. It seems that the Department, whether the Income Tax Department or Trade Tax department or Excise department is very quick in collecting its taxes but when it comes to refund then all kinds of excuses are given and refund is not granted. This is not fair. The Government should certainly collect its taxes quickly but it should also grant refund quickly where in law this refund is to be granted.

11. After the order dated 25.10.99 it was expected that the department should have immediately refunded the amount claimed by the petitioner like, a fair person but it seems that petitioner has been made to run from pillar to post but the refund has not been granted. This attitude cannot be appreciated.

12. The allegations in paragraph 14 of the petition that the revisional order dated 25.10.99 has neither been stayed nor reversed nor set aside is unrebutted and hence is to be presumed to be correct.

13. For the reasons given above the petition is allowed. The respondents are directed to refund the amount Rs. 32,84,357.86 with interest @ 12 % per annum from the date when it was due till the date of refund and this entire payment of the principal amount of refund alongwith interest @ 12 % per annum must be made within two months from today.

14. Before parting with this case we would like to mention that we are awarding interest because interest is not a penalty or punishment at all but rather it is the normal accretion on capital. In *Pratibha Processors and others Vs. Union of India and others*, : 2002 (82) ECC 233 (SC) it was observed (vide paragraph 13):- "In fiscal Statutes, the import of the words -- "tax", "interest", "penalty", etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty-- which is penal in character."

15. In our opinion interest should ordinarily be awarded whenever there is delay in paying some amount, otherwise the payee will suffer.

16. For instance, if A had to give B a sum of Rs. 10,000 in the year 1992 but he pays the said amount in the year 2004 in means that A has pocketed the interest during these 12 years. Money doubles every six years due to compound interest. If A had paid B the aforesaid amount when it was payable i.e. in the year 1992 then B would have invested that money somewhere and would have earned some interest on the same. However, if A did not pay the said amount when it was due in the year 1992 and pays it to B only in the year 2004 this means that A has earned interest on the said amount for these 12 years and has pocketed this interest. This is obviously not fair. Hence, ordinarily whenever an order of refund is made interest must also be awarded alongwith it.

17. In *South Eastern Coalfields Ltd. v. State of M.P. and Ors.* JT 2003 SC 443 the Supreme Court observed (vide paragraph 20) "Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (See: *Chitty on Contracts*, Edition 1999, Vol.11, Part 38-248, at page 712). Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many."