(2004) 09 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 578 of 2004

Voltas Limited and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Constitution of India, 1950 — Article 226

Citation : (2005) 1 BomCR 126 : (2005) 101 ECC 394

Hon'ble Judges : Lodha R.M., J;Devadhar J.P., J

Bench : Division Bench

Advocate : D.B. Shroff, H.N. Vakil, Carl Shroff and Vipul Bilve, instructed by Mulla and Mulla, for the Appellant; A.J. Rana and B.D. Joshi, for the Respondent

Judgement

1. Rule. Returnable forthwith.

2. The Advocate on record for the respondents waives service.

3. By consent of the learned Senior Counsel and learned Counsel appearing for the parties, the writ petition is treated on board for final hearing.

4. The elaborate facts need not be adverted to since admittedly during the pendency of the writ petition, the respondents have refunded to the petitioners a sum of Rs. 1,00,00,000/- which was deposited by them pursuant to the order dated October 4, 1985 in Writ Petition Nos. 189 of 1984 and 211 of 1981. The only question that remains is with regard to petitioners claim of interest for delayed refund.

5. In Writ Petition No. 189 of 1981 filed by the petitioners, the petitioners were directed to deposit with the Collector of Central Excise III an amount of Rs. 82,00,000/- and in Writ Petition No. 211 of 1981, the petitioners were directed to deposit with the Collector of Central Excise III an amount of Rs. 18,00,000/ - thus making a total of Rs. 1,00,00,000/-. In compliance thereof, the petitioners deposited an amount of Rs. 1,00,00,000/- with the Collector of Central Excise

III. The writ petitions, ultimately came to be disposed of by the Division Bench of this Court on July 9, 1991. The operative order reads thus :

"10. Accordingly, petition succeeds and it is declared that 30 revised price lists filed by the company on January 7, 1984 before the Assistant Collector, Central Excise, Division II, Thane, out to have been approved after allowing deductions on account of additional tax on sales tax, maintenance charges and site service charges as claimed by the company. The order of Assistant Collector is set aside and Assistant Collector is directed to take consequential steps to give effect to this judgment. In the circumstances of the case, there will be no order as to costs. The Bank guarantees furnished by the petitioners to stand discharged."

6. Against the said judgment of the Division Bench of this Court, the Union of India and the Central Excise Authorities preferred appeal before the Supreme Court. By an interim order dated May 4, 1993 the Supreme Court stayed the order of the Division Bench of this Court for refund of deposit. By the final order dated April 10, 2002 the appeal preferred by the Union of India and the Central Excise Authorities came to be dismissed.

7. From the narration of facts aforestated, it would be clear that the petitioners became entitled to the refund of the amount after the dismissal of the appeal by the Supreme Court. The Central Excise Department was liable to refund the amount deposited by the petitioners within reasonable time thereform. Not only that refund was not made to the petitioners within reasonable time, the petitioners were compelled to file the present writ petition claiming refund of the amount along with interest thereon. The amount deposited by the petitioners has been refunded to the petitioners on or about March 5, 2004 during the pendency of the petition.

8. It is true that neither the Division Bench of this Court nor the Supreme Court passed any specific order of refund of the amount deposited by the petitioners pursuant to the Court order alongwith the interest. For want of such specific order, the question of Award of interest until April 10, 2003 does not arise. It is only when the appeal was dismissed by the Supreme Court, the occasion of the refund arose. Three months was the reasonable time for the authorities to process the matter and refund the amount. When the refund was not made within reasonable time, the petitioners were compelled to send a written notice through their Advocates on May 10, 2003. The petitioners were unnecessarily required to make application u/s 11-B. One objection after the other was raised. One compliance after the other was required to be made. All this was unnecessary. The learned Counsel for the petitioners cited few judgments in support of petitioners claim of interest. Though the said judgments relate to their individual facts, particularly pre-deposit which is not the case here, however, in our considered view in the case before us, there was no justification for the excise department to retain the amount deposited by the petitioners pursuant to the order of the learned Single Judge of this Court once the matter attained finality on dismissal of the department''s appeal by the Supreme Court. In the

circumstances, we are of the view that the respondents must be awarded simple interest at the rate of 8% per annum from July 10, 2002 until March 5, 2004. We have fixed July 10, 2002, as in our view three months from the date of decision of the Supreme Court was the reasonable period within which the respondents ought to have refunded the amount deposited by the petitioners with the concerned excise authorities pursuant to the order of the learned Single Judge of this Court.

9. We, accordingly, dispose of the rule by following order :

i) We record and accept the statement made by the respondents that on or about March 5, 2004 an amount of Rs. 1,00,00,000/- has been refunded to the petitioners.

ii) The respondents shall be liable to pay simple interest at the rate of 8% per annum on the sum of Rs. 1,00,00,000/- from July 10, 2002 upto March 5, 2004.

iii) The due amount of interest as afore directed shall be paid by the respondents to the petitioners within one month from the date of receipt of certified copy of this order.

iv) No costs.