
(2001) 06 MAD CK 0031

Madras High Court

Case No: W.A No. 933 of 2001 and C.M.P. No. 8319 of 2001

Commissioner of C. Ex.

APPELLANT

Vs

Calcutta Chemical Co.
Ltd.

RESPONDENT

Date of Decision: June 19, 2001

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 11B

Citation: (2001) 133 ELT 278

Hon'ble Judges: N.K. Jain, C.J; P. Thangavel, J

Bench: Division Bench

Advocate: K. Veeraraghavan, ACGSC, for the Appellant; Arvind P. Datar for C. Saravanan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This writ appeal has been filed against the order dated 7-3-2000, passed in W.P. No. 14851/2000 whereby the learned single Judge has

directed the appellants-Department to pay the interest on the pre-deposit amount, at the rate of 18% p.a. from the date of the order of CEGAT

i.e. 2-9-1999 till actual payment made on 14-9-2000.

2. In the instant case, against the demand made by the appellants-Department, the respondent-Company has filed an appeal before the Customs,

Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as ""CEGAT""). The ""CEGAT"" directed the respondent-Company to pay a

sum of Rs. 30 lakhs as pre-deposit for entertaining the appeal. The respondent-Company has also paid the said amount. Ultimately, the appeal

was allowed in favour of the respondent-Company on 2-9-1999 and the demand was set aside. In spite of the repeated requests made by the

respondent-Company, the pre-deposit amount was not repaid by the Department. Therefore, the respondent-Company has filed the writ petition.

But, during the pendency of the writ petition the entire pre-deposit amount was repaid on 14-9-2000, without interest.

3. The learned single Judge, after hearing both sides and on considering the case laws cited, directed the Department to pay 18% interest, as

stated above. Aggrieved, against that order, the Department has filed the present writ appeal.

4. The main question involved in this writ appeal is whether the assessee is entitled to get interest on the pre-deposit, if so, at what rate?

5. Learned Additional Central Government Standing Counsel for the Department submits that the repayment of pre-deposit is not a refund u/s 11B

of the Central Excise Act. Therefore, the respondent-Company is not entitled for any interest. He submitted that the learned single Judge has

wrongly relied on *Suvidhe Ltd. Vs. Union of India*, and *Kuil Fireworks Industries Vs. Collector of Central Excise and another*, . The decision in

Suvidhe is not applicable to the facts of the present case as in that case, the Department issued show cause notice invoking the doctrine of unjust

enrichment in the pre-deposit amount, which was thoroughly dishonest and baseless and it was found that the very issuance of show cause was

against the legal propriety and hence the Apex Court ruled that for such dishonest and legally baseless notice, the assessee should get the

additional relief and granted 15% p.a. interest on the pre-deposit amount till payment. In the *Kuil Fire Works* case, the Court has come to the

conclusion that the goods were illegally detained by the Authorities and the assessee could not be made to suffer on account of an illegal act of

detention of the goods by the excise authorities and directed the Department to pay interest at the rate of 12% p.a. Hence this decision is also not

applicable to the case on hand. Therefore, in the absence of any specific provision, the respondent-Company is not entitled for any interest,

according to the Department.

6. On the other hand, learned Senior Counsel for the respondent-Company submits that there is no error in the order of the learned single Judge as

they have paid the pre-deposit for entertaining the appeal and once the appeal is allowed and the demand was set aside, the deposit amount is

bound to be repaid with interest, and the learned single Judge has rightly awarded interest and this Court should not interfere in the discretion so

exercised.

7. We have heard the learned Counsel for the parties and perused the materials on record. The order of the CEGAT was passed on 2-9-1999,

whereas, the pre-deposit amount was repaid on 14-9-2000. The learned A.C.G.S.C. has not been able to show whether it is necessary for them

to get audit clearance as the amount involved is more than 5 lakhs rupees, as argued and when they moved for such clearance. He cannot take

advantage of the reply dated 11-9-2000 on the pretext that there is no provision to pay interest in case of return of pre-deposit. The argument of

learned Additional Central Government Standing Counsel that the learned single Judge wrongly relied upon the case laws cited is not acceptable.

Further, in the above cases, interest was allowed. So, the Department cannot escape the liability to pay interest merely stating that the Court has

not found fault on the Department as was done in the above cases. In the absence of any material that there is no delay on the part of the

Department, it cannot be presumed that the delay is on account of the non-clearance from the Audit Department. That apart in the absence of any

material to show that the amount could not be paid in time due to the mistake on account of non-clearance from Audit Department, the

Department is liable to pay interest. If we consider the argument of the learned Additional Central Government Standing Counsel in another aspect

also, one the Department is claiming interest from assesseees for non-payment of deposit within due time and imposing 24% interest, the

Department cannot take the plea that they are not liable to refund the pre-deposit amount with interest for want of no provision to that effect.

Under the circumstances, the respondent-Company is entitled to receive interest on the payment of pre-deposit amount.

8. Now, the question remains is whether the respondent-Company is entitled to receive interest at 18% or 15% as suggested. On consideration,

we think that the respondent-Company is entitled to get 15% interest from the date of the order of CEGAT. The learned single Judge has awarded

18% interest. Under such circumstances, we modify the order of the learned single Judge and direct the appellant-Department to pay 15% interest

on the pre-deposit from the date of the order of CEGAT i.e. 2-9-1999 up to 14-9-2000, within one month from today. In case, it is not paid

within the stipulated time, the respondent-Company is entitled to receive 18% interest onwards, till the actual realisation. With the above

observations, the writ appeal is disposed of. No costs. Consequently, connected CMP is closed.