

(1997) 01 SC CK 0015

Supreme Court of India

Case No: Civil Appeal No's. 505-506 of 1997 (Arising out of SLP (C) No's. 12009 and 12011 of 1996)

Zenith Tin Works Ltd.  
and Others

APPELLANT

Vs

Union of India (UOI)  
and Another

RESPONDENT

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Date of Decision: Jan. 30, 1997

Acts Referred:

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

Citation: AIR 1999 SC 1602 : (1998) AIRSCW 4124 : (1998) 77 ECR 33 : (1998) 98 ELT 577 : (1997) 11 SCC 262

Hon'ble Judges: S. B. Majmudar, J; B.P. Jeevan Reddy, J

Bench: Division Bench

Final Decision: Disposed Of

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### Judgement

@JUDGMENTTAG-ORDER

1. Special leave granted.

2. These appeals are preferred against the orders of the High Court of Bombay disposing of the writ petitions filed by the appellants with certain directions. They arise in the following circumstances. There was a dispute with respect to valuation of the goods manufactured by the appellants. The Collector of Appeals passed orders on 31-8-1982 and 9-8-1985 upholding the appellants' claim. The department did not accept the decision of the Collector of Appeals and preferred appeals before the Tribunal. It appears that no order of stay was granted by the Tribunal. The appellants filed application for refund of the duty consequent upon the aforesaid orders of the Collector (Appeals). The said applications were rejected by the Assistant Collector on 29-1-1988 against which the appellants chose to file writ petitions in the High Court in March, 1988. On 20-4-1988, the High Court directed

the authorities to deposit the amount of duty concerned in these matters into that Court and allowed the appellants to withdraw the sum on furnishing bank guarantees. Accordingly, it is stated by Mr. S. Ganesh, learned Counsel for the appellants, that the appellants have withdrawn the said amount on furnishing bank guarantees and that the bank guarantees have been kept alive and are subsisting even today.

3. On 27-2-1990, the Tribunal dismissed the appeals preferred by the department on the question of valuation.

4. The writ petitions filed by the appellants came up for final hearing in February, 1996 and have been dismissed following the decisions of this Court in 272755 and 287709 . The High Court has directed the appellants to re-deposit the amount withdrawn by them along with 12% interest within two weeks from the date of the order. The amount so paid back was directed to be invested in a Nationalized Bank and the Assistant Collector was directed to consider the question of refund, if any, afresh in the light of the amended provisions of the Central Excise Act.

5. Mr. Ganesh submitted that inasmuch as the question of valuation has finally been decided in his favour by the Tribunal as far back 27-2-1990, and also because the Department has accepted the said judgment and has not questioned it by way of appeal, the right to refund became vested in the appellants and became final. It is submitted that mere pendency of the writ petitions (wherein the aforesaid interim order and final orders were passed) does not mean that the refund claim is pending as on the date of the coming into force of the 1991 Amendment Act or the decision of this Court in 299223 . It is not possible to agree. What the appellants did was that instead of filing an appeal against the order of the Assistant Collector dated 21-1-1988 (sic) they chose to file writ petitions. For that reason, it cannot be said that the refund claim is not pending on the said dates.

6. Mr. Ganesh then submitted that the High Court was not justified in awarding interest at the rate of 12% per annum in the impugned order. He submits that there was no such stipulation in the interim order dated 20-4-1988. He also submits that the provision providing for interest was introduced in the Act some time in 1995 only.

7. In the light of the judgment in Mafatlal Industries and the format order enclosed herewith , the only order that can be passed is that it shall be open to the appellants to file an appeal before the Commissioner of Central Excise (Appeals) within sixty days from today against the order of the Assistant Collector dated 29-1-1988. The order of the High Court awarding interest is, however, set aside. The question of interest shall be considered and disposed of by the Commissioner (Appeals) according to law.

8. The bank guarantees furnished by the appellants shall be kept alive for a period of two months from today. After the expiry of the said period of two months, the

appellant shall be liable to pay back the amount drawn out by them to the department, subject of course, to any order of stay by the appellant (sic) authority. Meanwhile, if the bank guarantees are not renewed before one month of their expiry, the bank guarantee can be encashed by the Revenue.

9. The appeals are disposed of with the above directions. No costs.