

(2016) 07 BOM CK 0127

BOMBAY HIGH COURT

Case No: Writ Petition No. 2810 of 2015

Garden Silk Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: July 18, 2016

Citation: (2016) 338 ELT 670

Hon'ble Judges: S.C. Dharmadhikari and Dr. Shalini Phansalkar Joshi, JJ.

Bench: Division Bench

Advocate: S/Shri Durgesh Nadkarni with C.S. Biradar i/by M/s. Legal Solutions, for the Petitioner; Shri Pradeep S. Jetly, Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. By this petition under Article 226 of the Constitution of India, the petitioner prays for issuance of writ of mandamus, or writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the respondents to grant interest on delayed refund amount within a time bound period.

2. The petitioner has pointed out to this Court that an order was passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai on 652014. By that order, the Tribunal allowed the appeal of the present petitioner. It granted refund of the sum of Rs. 90,47,661/. The Tribunal directed the amount to be released. But what has transpired is, that after the Tribunal's order to that effect dated 6-5-2014, the amount was paid by the Respondent No. 3 on 16-2-2015.

3. The petitioner submits that on this delayed payment they were entitled to interest. They made a representation, copy of which is at AnnexureD (Page 28) to the writ petition. They stated that the refund was claimed as early as on 15122006. However, the amount was refunded/paid on 16-2-2015. The petitioner, therefore, claimed interest for the delayed refund by relying on Section 27A of the Customs

Act, 1962. It was submitted that by that section, which was substituted with effect from 23-12-1991, any duty ordered to be refunded under sub-section (2) of Section 27, if not refunded within three months from the date of receipt of the application under subsection (1) of that section, there shall be paid to the applicant interest at such rate not below 5% and not above 30% per annum, as is for the time being fixed by the Central Government by Notification in the Official Gazette. This amount has to be paid from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty. The petitioner, therefore, submitted that the interest in this case is payable from 15-3-2007 till 15-2-2015. The petitioner relied upon the judgment of the Hon"ble Supreme Court of India in the case of **Ranbaxy Laboratories Ltd. v. Union of India, reported in 2011 (273) E.L.T. 3 (S.C.) : 2012 (27) S.T.R. 193 (S.C.)**.

4. The petitioner states that there was no response to this letter and, therefore, reminders were addressed on 1852015 and 962015. Since the demand of Interest was not specific, the petitioner once again invited the attention of the Authority to the *pari materia* provision of the Central Excise Act, 1944. Even these letters/demands have fallen on deaf ears is the complaint. That is why the present petition.

5. During the course of the argument, Mr. Nadkarni has tendered a compilation of orders, including the judgment of the Hon"ble Supreme Court of India in the case of Ranbaxy (*supra*). He also invites the attention of the Bench to an order **Tien Yuan India Private Limited v. The Union of India 2016 (336) E.L.T. 52 (Bom.)**.

6. Mr. Jetly, learned counsel appearing on behalf of the respondents would submit that a writ petition simpliciter for a money claim does not lie and no mandamus can be issued directing payment of sum in money. He places reliance upon a decision of the Constitution Bench of the Hon"ble Supreme Court of India in the case of **Suganmal v. State of M.P. and others, reported in AIR 1965 SC 1740**, and submits that this judgment was followed later in the case of **Union of India v. Orient Enterprises, reported in 1998 (99) E.L.T. 193 (S.C.)**.

7. After having heard both sides, we do not think that the preliminary objection raised by Mr. Jetly has any merit. This is a clear case of a statutory interest and which is payable in the event the refund claims are not granted. This serves as a deterrent for holding up sums which are legitimately due and payable. Therefore, the refund of duty must follow in the event there is a declaration in favour of the assessee that the amount was not payable. Once that amount is payable/refundable and a refund application was also made, which was allowed, what the respondents have done is only paid the sum, namely, the principal sum. The interest component for the delayed payment or refund has not been paid. The writ petition is filed so as to claim this crystallized amount. There is no denial of the statutory provision, nor the mandate flowing therefrom is questioned. The decisions relied upon by Mr. Jetly do not refer to the statutory prescription and which is specific in terms. It is not as if

any such request and as is being made is considered for the first time. Upon the *pari materia* provision emerging from Section 11BB of the Central Excise Act, 1944, a Division Bench of this Court to which one of us (S.C. Dharmadhikari, J.) was a party held that the Revenue must, therefore, pay the amount in time. If the amount is not refunded in time, it must carry interest. The period from the time the refund application was made and the amount of actual refund is the time period within which the obligation to pay the interest arises and precisely this is the interest which is being claimed. Ordinarily, the parties like the petitioner should not be required to make application for refund. Further, there is no *lis* or adjudication for the duty amount is not payable. The duty is not payable but has been paid already and, then, that sum is required to be refunded, provided all the conditions in that behalf are satisfied. Once there is a refund order, as has been made in the present case in favour of the petitioner and even the implementation thereof is delayed, then, that must carry interest and that is why Section 27A [subsection (1)] provides for payment of interest. It is now that sum which is directed to be payable.

8. As a result of the above discussion, the writ petition succeeds. The interest in terms of Section 27A(1) of the Customs Act, 1962 shall be released and the sum paid as expeditiously as possible and within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is accordingly allowed.