

(1993) 06 CAL CK 0041

Calcutta High Court

Case No: Appeal No. 599 of 1990 in Matter No. 459 of 1978

Universal Petro
Chemicals Ltd.

APPELLANT

Vs

Superintendent, Central
Excise

RESPONDENT

Date of Decision: June 8, 1993

Acts Referred:

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

Citation: (1994) 72 ELT 548

Hon'ble Judges: Nure Alam Chowdhury, J; Ajit K. Sengupta, J

Bench: Division Bench

Advocate: Somnath Chatterjee, A. Mitra, P. Chatterjee and P.K. Chattopadhyaya, for the Appellant; N.C. Roy Chowdhury and P.K. Bose, for the Respondent

Judgement

Ajit K. Sengupta, J.

On or about 12th June, 1978 the appellant moved a writ application in this Court, inter alia, contending that the letter dated 30th May, 1978 issued by the Superintendent of Central Excise, treating the Transformer oil under Tariff Item No. 8 is wrongful and illegal.

2. On the said application Rule Nisi was issued on 12th June, 1978. An interim order was also passed by Sabyasachi Mukherjee, J. (as His Lordships then was). The said order is as follows :-

"Let a Rule Nisi be issued in terms of prayers (a), (b), (c) and (d) of petition. Returnable 6 weeks hence. Upon the petitioner depositing with Mr. H.P. Meharia, Advocate of M/s. Meharia & Co., Advocates for the petitioner who is appointed Receiver without security and without remuneration a sum of Rs. 1,50,000/- there will be an interim injunction in terms of prayer (a) of the petition valid for 10 days for the time being with liberty to apply for extension on notice to the other side. Mr. Meharia will hold the said amount and until

further order of this Court.

Receiver and all parties to act on a signed copy of the minutes."

Thereafter, a further order was passed by the learned Judge on 20th June, 1978 which is to the following effect :-

"Respondents will deposit amount of excise duty in respect of the clearance made by them from 1st July, 1978 with Mr. M.P. Meharia who has been appointed Receiver and Mr. M.P. Meharia would hold the same in separate accounts (and will invest the same) and will keep the respondents" Advocate-on-Record informed of the deposit made from time to time. The petitioner would be at liberty to clear the goods in terms of the earlier order upto 30th June, 1978. The balance amount lying unadjusted out of the said deposit of Rs. 1,50,000/- will continue to be held by Mr. M.P. Meharia subject to this verification the interim order passed will continue till the disposal of the application. Affidavit in opposition within 4 weeks. Affidavit-in-Reply within 2 weeks, thereafter, and the matter adjourned till one week thereafter."

3. On 19th July, 1978 an application was made by the appellant for modification of the said order, dated June 20, 1978 to the extent that the petitioner i½ be allowed to remove the transformer oil without making any deposit of the alleged excise duty. On the said application the following order was made by the learned Judge on 8th December, 1978 :-

" It is ordered without prejudice to the rights and contentions of the petitioner above named that the transformer oil is not subject to any excise duty the petitioner above named shall collect central excise duty on transformer oil from its customers on undertaking to this Court to refund the amount of Central Excise duty so collected if it is ultimately held that no central excise duty is payable on transformer oil and it is further ordered that all parties concerned to act on a copy of the minutes of this order signed by an officer of this Court being produced before them."

4. On 5th September, 1989 an application was made by the appellant for amendment of the writ petition relating to the jurisdiction of the Central Excise Authority.

5. On 21st September, 1989, Babulal Jain, J. passed the following order :

"It is submitted on behalf of the writ petitioner that the order for stay of the proceedings as against the Excise Authority may be vacated for the time being and Central Excise Authorities be at liberty to proceed with the matter in accordance with law. The writ petitioner will also be at liberty to make such representation before the Central Excise Authorities as the writ petitioner may be advised.

The writ petitioner will submit all necessary papers and documents which may be required for the purpose of proceeding with the assessment, by the Central Excise Authorities for the purpose of proceeding with the matter of assessment under the Central

Excise Act such documents are to be submitted by the writ petitioner to the Central Excise Authorities within a fortnight from today. The Central Excise Authorities will be at liberty to ask for such further or other documents as they may require within 4 weeks from today. The Central Excise Authorities will be at liberty to proceed in the matter of the assessment of the liability of the writ petitioner under the said Act in accordance with law. Such decision is to be taken within 4 months from the date of submission of the required documents. The matter will appear before me as "Part Heard" for further orders on 21st February, 1990. No effect is to be given to the orders passed by the Adjudicating Officer and/or the appropriate officers of the Excise Department until further orders of this Court.

So far as the monies lying with Mr. MR Meharia, Advocate who was appointed "Receiver" in this matter are concerned, I appoint Mr. P.K. Bose, Advocate appearing on behalf of the Excise Authorities as a Joint Receiver alongwith Mr. M.P. Meharia. The monies and fixed deposits held by Mr. M.P. Meharia shall be deemed to be in the joint possession of the Joint Receivers from the date of this order.

All further renewals of the fixed deposits which are at present held in the name of Mr. M.P. Meharia, the present Receiver are to be renewed from time to time in the names of the Joint Receivers until further orders of this Court.

The interim orders are modified to the above extent.

All parties including the Central Excise Authorities to act on a signed copy of the minutes of this order on usual undertaking."

6. It may be mentioned that the order or adjudication was made by the Collector of Central Excise on 16th May, 1990 and the Collector has directed as follows :

"Having decided the issue No. (i) as indicated in para 3:1 above that the Transformer Oil manufactured by the said Company from duty paid TOBS/TOFS during the period from 1-3-1978 to 10-5-1982 was classifiable and liable to Central Excise duty under Tariff Item No. 8 of the erstwhile Central Excise Tariff, I proceed with the second issue No. (ii) as indicated in para 3:1 above. This issue would relate to the amount of Central Excise duty payable on Transformer Oil manufactured and cleared by the said company during the period 1-3-1978 to 10-5-1982. In this connection I take into account the submissions made by the said company on 11-5-1990 as indicated in para 2:26 above. The said company had accepted the figures arrived at by the joint inspection of records by the Central Excise Officers and the said Company's authorised representative. A xerox copy of the statement showing the details of clearance of Transformer Oil during the period 1-3-1978 to 10-5-1982 and the duty involved is at Annexure "B" (4 papers). The above statement has been accepted by the said company also as indicated earlier. Accordingly, the amount of Central Excise duty due to the department from the said company for the above clearance works out to Rs. 42,26,546.25. Thus, an amount of Rs. 42,26,546.25 is required to be paid by the said company. The Joint Receiver in respect of the said

Company's clearance of Transformer Oil during the period 1-3-1978 to 10-5-1982, subject to the Hon"ble Calcutta High Court's further order in the Matter No. 459 of 1978."

7. On December 10,1990 Babulal Jain, J. passed the following order :

"The Court: Mr. A. Mitra appearing on behalf of the writ petitioner submits that his client wants to prefer an appeal from the adjudication order, dated 16th May, 1990 made by the Collector of Central Excise, Calcutta-1. It appears from the said order that the writ petitioner was held to be liable to pay Excise duty amounting to Rs. 42,26,546.25. Interim orders were made by this Court in the above writ petition in favour of the writ petitioner in 1978 inter alia on the condition that the full amounts of Excise duty are deposited by the writ petitioner with the Receiver as and when the goods were released. On that basis the goods were released between 1978 to 1982 and various amounts were deposited by the writ petitioner on account of excise duty since 1978 and on that basis the writ petitioner's goods were released."

So far as the instant writ petition is concerned Mr. Mitra submits that his client does not intend to press the same any more and as such, the same is dismissed as not pressed. It is made clear as prayed for by Mr. Mitra that this order will not in any manner prejudice the Writ petitioner's rights if any to appeal from or to apply for revision or review of the said adjudication order in accordance with law.

The amounts which are now lying with the Joint Receivers were paid towards the satisfaction of the excise liabilities of the petitioner as and when the said liabilities arose. The said amounts have been kept in fixed deposits since 1978 onwards, and have been earning interest. In the premises the Excise Authorities are entitled to the entire interest which has accrued on the same on and the since the date the amounts were so deposited by the writ petitioner with the Receiver and/or Receivers and whatever interest has accrued due thereon will go to the Excise Authorities. The Excise Authorities will be entitled to the payment of the sum of Rs. 42,26,546.25 from out of the principal amount deposited by the writ petitioner and all interest that has accrued thereon as and by way of interest either on the principal amount so deposited or on the interests earned thereon from time to time is to be paid to the excise authorities by the Joint Receivers and/or the Receiver. If at all the writ petitioner satisfies this court that the writ petitioner deposited with the Receiver any amount in excess of the sum of Rs. 42,26,546.25 then in that event the writ petitioner will be entitled to apply to this Court for refund of the said excess amount only so deposited by him in excess of the excise liabilities, along with the accrued interest thereon. Since the writ petitioner does not intend to press this writ petition any further the writ petition is dismissed subject to the orders made herein.

So far as the amount lying with the Joint Receivers and/or the Receiver is concerned, the writ petitioner is directed to forthwith submit a full account of the moneys deposited by the writ petitioner from time to time with the Receiver and the Receiver will also submit full account of the amounts received by him from time to time from the writ petitioner as also

the interest earned by him thereon. So far as the disbursement of the amount lying with the Joint Receivers is concerned, the writ petitioner and also the Receiver, Mr. Meharia who as the original Receiver are directed to submit full particulars of the amounts deposited by the writ petitioner with the Receiver from time to time and invested in fixed deposits.

"Let this matter appear in the list "for direction" one week hence at 2 P.M.

The writ petition stands disposed of accordingly."

8. On 17th December, 1990 Babulal Jain, J. passed an order directing M.P. Meharia to give full particulars of the actual deposits of money received from the writ petitioner excluding the interest amount earned thereon.

9. On 20th December, 1992, the following order was made:-

"Upon reading on the part of Universal Petro Chemicals Ltd. above-named (hereinafter referred to as the said petitioner) its petition verified by an affidavit of Devi Prosanna Chatterjee affirmed on the 12th day of June, 1978 and the exhibits annexed to the said petition and marked respectively "A", "B", "C" and "D" all filed on the 12th day of June, 1978 and a Rule Nisi issued herein and dated the 12th day of June, 1978. And only shall be adjusted by the Excise Authorities towards part satisfaction of the total dues of the writ petitioners as per adjudication order of the Excise Authorities as mentioned in the earlier order dated the 10th day of December, 1990 and this Court being of opinion that the balance of the amount lying with the Receiver, is admittedly the usufruct of the said deposit of Rs. 38,20,000/- (Rupees Thirty eight lakhs Twenty thousand only) which was paid in lieu of the excise dues pending hearing of the writ petition and the sum goes to the party which has been held to be entitled to the said sum of Rs. 38,20,000/- (Rupees Thirty eight lakhs Twenty thousand only), i.e. the excise authorities. And so far as the shortfall in the deposit made by the writ petitioner, as mentioned hereinabove is concerned, and upon the submission made on behalf of the writ petitioner that some moneys were also paid on their behalf to the Excise Authorities directly during the relevant period, i.e. during the pendency of the writ petition towards liabilities cover by the order of excise authorities this court makes it quite clear that the excise authorities shall be entitled to realise the said sum of Rs. 4,06,546.25 (Rupees Four lakhs six thousand five hundred forty six and paise twenty five only) in accordance with the adjudication order. And it is further ordered that if at all the Excise Authorities are entitled under the law to realise any interest on the said sum of Rs. 4,06,546.25 only they will be at liberty to do so, in accordance with law and that if at all the writ petitioner satisfies the Excise Authorities that any part of the said outstanding sum has been paid or deposited by the writ petitioner with the Excise Authorities directly then and in that event, the Excise Authorities shall give credit to the writ petitioner for the same. And it is further ordered that this order disposes of the entire matter relating to the amount lying with the Receiver in terms of the judgment and order dated the 10th day of December, 1990. And it is further

ordered that all parties and the Joint Receivers including Mr. M.P. Meharia and the concerned Banks do act on a xerox copy of the dictated order, duly authenticated by the Asstt. Registrar of this Court."

10. This appeal has been preferred against the said orders dated 10th and 20th December, 1990. In the appeal a stay application was filed on 24th December, 1990. The Appeal Court passed the following order :-

"Order in terms of prayer (a) of the petition. Returnable on 18th January, 1991 as application (New). Liberty to move the vacation Bench on notice to the other side."

11. Thereafter, on 14th February, 1991 the following order was made :-

"Let it be recorded that no affidavit having been filled, the allegations made in the petition are not admitted.

This appeal arises out of a claim of the Central Excise Authority. Certain points were raised in the writ petition itself and against the final order this appeal has been preferred by the assessee. Meanwhile, the statutory appeal preferred by the assessee is now pending. As at present, the liability which has been determined as the liability of the assessee, is a sum of Rs. 42,26,546.25. Accordingly, out of the amount now lying with the Receiver pursuant to the order of the Court, let the sum of Rs. 42,26,546.25 be paid to the Excise Authority but subject to final results of the proceedings. So far as the balance amount lying in the hands of the Receiver is concerned, that will be held by the Joint Receivers subject to the further order of the appeal court but they are directed to invest the same in a Fixed Deposit Account for 181 days in a nationalised bank and/or renew the same upon maturity of the existing fixed deposit.

As the appeal involves a short point of law, it is not necessary to file Paper Book and the same is dispensed with. Notice of Appeal is waived. The stay petition is treated as the Paper Book. If there is any other paper or document which was relied on in the writ court, alongwith the judgment and the order appealed from the same shall be included in the supplementary paper book which will be filed within a period of fortnight from this date. Liberty is given to the parties to apply for early hearing upon filing of the Supplementary Paper Book.

The Registrar, Original Side of this Court is directed to furnish the Advocate on Record for the Appellant with a certified copy of the order and the judgment appealed from an expeditiously as possible.

The Joint Receivers shall retain the sum of 200 [...] each out of the money lying in their hands.

Liberty is given to apply for early hearing.

The Joint Receivers, the Registrar, Original Side and the parties to act on a signed copy of this dictated order on usual undertaking."

12. The only question which calls for consideration is whether the appellant is entitled to interest which has accrued on the amount deposited with the Receiver pursuant to the order of the Court for clearance of the goods. It has been contended by Mr. Ray Chowdhury, learned counsel appearing for the Excise Authorities that the appellant has no claim whatsoever on the interest which has accrued inasmuch as the court in order to protect the interest of the Revenue directed excise duty payable on the goods to be deposited with the Receiver so that ultimately if the revenue succeeds and in fact the revenue had succeeded, the entire money that may be lying with the Receiver, including the accrued interest would be paid to the excise authorities and the appellant cannot lay any claim on that. He has drawn our attention to the orders passed by Babulal Jain, J. as referred to herein before.

13. The contention of Mr. Anindya Mitra, learned counsel appearing for the appellant is that there is no provision under the Central Excises and Salt Act, 1944 for payment of any interest which accrued on the amount deposited by the appellant in court. It is his contention that whatever money has been deposited is on account and unless an adjudication order was made, the respondents could not have made any claim on any part of the said interest. He has also submitted that having regard to the fact that there was an order staying realisation of excise duty on the transformer oil and there being no provision under the said Act for levy of any interest, no interest can be awarded to the respondents. Our attention has been drawn to the decision of the Supreme Court in [Gokak Patel Volkart Limited Vs. Collector of Central Excise, Belgaum,](#)

14. In that case the question was whether the Show Cause Notice was barred by limitation. This point arose because the High Court stayed collection of excise duty on the product in question. That order was made in 1976 and in 1981 the Rule was discharged and leaving open to the petitioner to urge all the contentions in reply to the show cause notice issued by the excise authorities. There the Supreme Court held that since the High Court directed stay of collection, there was no stay in the matter of issue of notice or levy of duty. Therefore, Explanation u/s 11A of the said Act would not be applicable and accordingly the Show Cause Notice was barred by limitation.

15. In the case of [Ballarpur Industries Ltd. and another Vs. Union of India and others,](#) it has been held by the Division Bench of the Bombay High Court as under:

"Before we part with this case, it is to be noted that the respondent has filed an application claiming for interest on the total assessment. We do not find that there is any statutory provision for claiming such interest on the amounts due unlike the one available under Income Tax Act, 1961. It is further to be noted that in the interim directions given by this Court after due hearing given to the respondents on 14-12-1981 and 13-1-1982, no such directions regarding the interest was given by this Court. The format which was

issued in pursuance to the directions of the Supreme Court and the language adopted therein cannot afford a right to demand interest on the respondents, since the respondents never pressed for interest during the entire pendency of this petition. Moreover, the relief of interest is discretionary. We, however, find that there has been a bona fide dispute between the parties regarding the correct assessment and also in view of the changing law laid down by the Supreme Court from time to time. We have also observed that the petitioners have furnished not only Bank Guarantees, but have paid full assessment of Excise Duty and have made payments worth several crores of rupees from time to time. It is in these circumstances, that we feel no order needs be made in respect of the claim of interest made by the respondent, particularly because we have taken a decision and have struck down the second impugned order of assessment and have directed fresh assessment in the light of the observations made above."

16. We have considered the rival contentions. It appears that the appellant was directed to deposit an amount equivalent to excise duty in respect of the clearance to be made by them with the Receiver who was directed to invest the same. The contention was that no excise duty was leviable on Transformer Oil. Accordingly unless the adjudicating authority decides as to whether any excise duty is leviable on Transformer oil, there cannot be any question of payment of excise duty.

17. It is an admitted position that under the Central Excise Act no interest is leviable on the payment of excise duty. Excise duty is levied on the manufacture of a product, which may ultimately be collected at the time of clearance of such product. As laid down by the Supreme Court, there are two different and distinct circumstances - one is levy of duty and the other is collection of duty. In this case the interim order was made on 12th June, 1978 directing the appellant to deposit equivalent amount of excise duty. There was a stay of levy of collection of excise duty on Transformer oil so long as it was not decided as to whether Transformer oil is excisable or not. The amount which was deposited with the Receiver retained the character of security deposit. So long as the liability was not determined, the money did belong to the appellant. Excise authorities did not make any application before the Court either for vacating the interim order or for payment of the sum lying deposited with the Receiver. If it was the case of the revenue that money lying deposited with the Receiver was on account of excise duty, they could have asked for payment of such sum to the excise authorities or could have obtained an order vacating the interim order to enable them to make levy and collection of duty. The period during which there was stay of the show cause notice in pursuance whereof duty was sought to be levied from 1st July, 1978 on the Transformer Oil, there could not have been any determination as regards liability to pay duty on the Transformer oil. Investment which was directed to be made of the money lying with the Receiver was to protect the interest of the appellant as in the event if it was ultimately held that no such duty was leviable, then the appellant would have got back the entire money with interest accrued thereon. This is only on the footing that such money until liability is determined regarding payability of excise duty on the product, remains as security deposit and retains its character as

such. As indicated earlier, there is no provision for payment of interest. Duty is payable as soon as manufacture is made. But here the question was whether the Transformer oil is a product which would attract excise duty or not. Accordingly the respondents issued show cause notices which had been challenged and stay was obtained. It is only after the stay is vacated and the adjudication is made, the question of payment of duty would arise. As a matter of fact by the order dated 21st September, 1989, "Babulal Jain, J. granted liberty to the Excise authorities to proceed in the matter of assessment of liability and thereupon the liability to pay excise duty on the product in question was determined and the duty was quantified. Had there been any provision regarding chargeability of interest, Collector of Central Excise would have levied such interest in the adjudication order. We have already extracted the operative part of the adjudication order which has only quantified the amount of duty payable for the period from 1-7-1978 to 10-5-1982 amounting to Rs. 42,26,546.25. The liability has been determined and quantified by the said adjudication order on 16th May, 1990. Accordingly, there being no statutory interest leviable, excise authorities can only ask for the said sum quantified to be payable and which in fact has been paid by the Receiver. The dispute is with regard to the balance amount which is lying with the Receiver as accrued interest on the deposits made from time to time by the appellant from 1978. The direction of the learned Judge which has been assailed is that the monies lying with the Receiver were paid towards satisfaction of the liabilities of the appellant as and when such liabilities arose and that the amounts kept invested in 1978 and onwards have been earning interest and the excise authorities are entitled to the entire interest which has accrued since the date the amounts were deposited. In our view this cannot be accepted as correct determination on the facts of the case. It is true that if the excise authorities realise excise duty and if ultimately it is held by the court that such duty was not leviable at all subject to the right of the customers to get refund from the manufacturers, the court may direct the revenue authorities to refund the amount with interest as and by way of compensation. It is contended by Mr. Roy Chowdhury that the same principle should be applied whenever the revenue is deprived of the use of the money. But, as we have stated, until the dispute is finally determined, liability is not quantified and only upon such determination of liability and quantification thereof the question of payment of duty would arise.

18. We are therefore, of the view that excise authorities cannot claim any interest dehors the statute. The question, therefore is whether the Court should direct payment of interest by the appellant, as excise duty for the period 1978 to 1982 determined to be payable was not paid even after the order of adjudication was made on 16th May, 1990.

19. Having regard to the facts and circumstances of the case, we are of the view that excise authorities should be paid interest on the aforesaid amount of Rs. 42,26,546.25 only from the date of adjudication order, that is to say, 16th May, 1990 till the date of payment at the rate of 18% per annum. This is the period during which excise duty levied could not be collected because the money was lying with the Receivers. The interest which we hold payable is no statutory interest. On the date of adjudication the deposit

stands appropriated towards the duty payable and the money in deposit to the extent of duty becomes the money of the Exchequer of which the accretion by way of interest should also belong to it. We, therefore, dispose of the appeal by holding that Excise authorities shall be entitled to interest at the rate of 18% per annum from 16th May, 1990, being the date of adjudication, on the said sum of Rs. 42,26,546.25 till the date of payment. The Joint Receivers upon such calculation shall pay such interest to the Excise authorities and the balance amount shall be paid to the appellant after retaining their remuneration fixed at Rs. 25,0007- each.

20. All parties to act on a signed copy of the minutes of this operative part of the judgment and order on the usual undertaking.