

**(2013) 07 DEL CK 0468**

**Delhi High Court**

**Case No:** Writ Petition (Civil) No. 12012 of 2009

M/s. Pioneer Soap and Chemicals

APPELLANT

Vs

Union of India and Another

RESPONDENT

**Date of Decision:** July 4, 2013

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Customs Act, 1962 - Section 125

**Citation:** (2013) 297 ELT 10

**Hon'ble Judges:** Sanjiv Khanna, J; Sanjeev Sachdeva, J

**Bench:** Division Bench

**Advocate:** C. Hari Shankar and Mr. S. Sunil, for the Appellant; Rahul Kaushik, Advocate, for the Respondent

### **Judgement**

Sanjiv Khanna, J.

Pioneer Soap and Chemicals, sole proprietorship of Lalit Kumar Goyal, has filed the present writ petition under Article 226 of the Constitution of India, impugning two orders of the Settlement Commission dated 24th February, 2009 and 28th August, 2009 to the limited extent that he has been directed to pay interest under Rule 8 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 (1996 Rules, for short). We record that the second prayer made by the petitioner in the writ petition for grant of benefit of exemption in respect of 134 Metric Ton crude palm oil has not been pressed or argued. The contention of the petitioner is that no interest can be levied for violation of post importation condition and the liability to duty has no relation to Section 28AB of the Customs Act, 1962 (Act, for short) and arises solely u/s 125 of the Act. Reliance is placed upon decisions of the Supreme Court in Commissioner of Customs (Import), Mumbai Vs. M/s. Jagdish Cancer and Research center, and Commissioner of Customs, New Delhi Vs. C.T. Scan Research center (P) Ltd., and decision of the Bombay High Court in Commissioner of Customs (Import) versus Wockhardt

Hospital And Heart (2000) 200 ELT 15 (Bombay). It is accordingly submitted that liability to pay "duty" would be u/s 125 of the Act and was not relatable to Section 28AB and, therefore, the petitioner is not liable to pay interest u/s 28AB. Reference was made to Rule 8 of the 1996 Rules and it was submitted that the rule itself was ambiguous and not clear. Section 28AB of the Act would be applicable to specific circumstances and when the pre-conditions therein were not satisfied and, therefore, the rate of interest specified in Section 28AB should not have been applied for computing interest under Rule 8 of 1996 Rules. A separate notification should have been issued under Rule 8. It is submitted that interest could be only charged if the statute specifically authorises charging of the said interest ([M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others, , J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, and Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., 1st Circle, Mattancherry and Others, \)](#).

2. The petitioner had imported crude palm oil and at the time of payment of Customs duty had claimed benefit of notification No. 21/2002-CUS dated 1st March, 2002 as amended by notification No. 20/2004-CUS (NT) dated 16th January, 2004. The said notifications are Annexures P-3 and P-4 to the writ petition. Under notification No. 20/2004-CUS (NT) dated 16th January, 2004 oils other than edible grade were eligible to ad valorem concessional duty at the rate of 20% provided condition No. 5 of the earlier notification No. 21/2002-CUS dated 1st March, 2002 was satisfied. Condition No. 5 reads:

5. If the importer follows the procedure set out in the Customs ((Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

3. Taking advantage of notification No. 20/2004-CUS (NT) dated 16th January, 2004, the petitioner imported crude palm oil for manufacture of soap on payment of concessional duty at the rate of 20% ad valorem. He also gave an undertaking that he would comply with the procedure mentioned in the 1996 Rules as mandated by condition No. 5 of the notification dated 16 January, 2004.

4. Subsequently, the respondents realised and came to know that the petitioner instead of using imported palm oil for manufacture of soap had diverted it into the local market. Show cause notice dated 24th April, 2007 was issued and it was alleged that the petitioner was liable to pay import duty of Rs. 1,27,72,140/- along with interest under Rule 8 read with Section 28AB of the Act.

5. Instead of contesting the show cause notice, the petitioner approached the Settlement Commission under the Act vide settlement application dated 15th May, 2008.

6. By final order dated 24th February, 2009, the Settlement Commission settled the case by directing the petitioner to pay Rs. 1,27,72,140/- as representing full and true duty liability with interest payable thereon. The petitioner thereafter moved an

application for modification of the order dated 24th February, 2009 by moving a miscellaneous application to the extent it was called upon to pay interest. The said miscellaneous application was dismissed by the second order of the tribunal dated 28th August, 2009. The reasoning given by the tribunal records:

- (i) That the goods in question were not available for confiscation and, therefore, Section 125 of the Act was not applicable.
- (ii) The decision in the case of Jagdish Cancer & Research Centre (supra) was distinguishable.
- (iii) Under notification No. 21/2002-CUS (supra), the imports had been made under the 1996 Rules and under Rule 8 thereof the petitioner was liable to pay interest.

7. Decision in the case of Jagdish Cancer & Research Centre, CT Scan Research Centre (P) Limited and Wockhardt Hospital And Heart (supra) are clearly distinguishable. In the said cases, reference has been made to the provisions of the statute applicable, i.e., Customs Act and thereafter observed that interest was not payable under any of the applicable provisions. The 1996 Rules were not applicable to the said imports and, therefore, the said rule was not considered or examined. In the present case, the respondents have specifically invoked and have relied upon Rule 8 of the 1996 Rules. We have to, therefore, interpret and examine Rule 8 to ascertain whether any interest was payable under the said Rule. We need not, therefore, examine the other provisions of the Act.

8. At this stage, we record and note that the petitioner has not challenged validity or vires of Rule 8. It is also not alleged or stated that Rule 8 of the 1996 Rules falls foul and was ultra vires for excessive delegation. No such plea stands raised or arguments addressed. Interpretation of Rule 8 is pressed.

9. Rule 8 of the 1996 Rules reads as under:

8. Recovery of duty in certain case.- The Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise shall ensure that the goods imported are used by the manufacturer for the intended purpose and in case they are not so used take action to recover the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, alongwith interest, at the rate fixed by notification issued u/s 28AB of the Customs Act, 1962, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

10. The rule is clear and categorical; it stipulates where a manufacturer does not use the imported goods for the intended purpose, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise shall take legal action for recovery of the amount equal to the difference of duty, i.e., the duty which was actually leviable but for the exemption, along with interest at the rate fixed by

notification issued u/s 28AB of the Customs Act, 1962. The period for which the interest was payable is also specified. It starts from the date of importation of goods on which the exemption was availed of and ends with the date of actual payment of the entire amount of the difference in duty.

11. Section 28AB of the Customs Act, 1962 was not invoked in the present case. It is not the case of the respondents that Section 28AB was applicable or conditions for invoking the said Section were satisfied. They rely upon Rule 8. Rule 8 does not incorporate Section 28AB. Rule 8 also does not make the pre-conditions mentioned in Section 28AB, part and parcel of the said Rule. Levy of interest for short levy of duty is prescribed by Rule 8 itself. Interest is chargeable because of the provisions of Rule 8 and not because of Section 28AB. Pre-conditions or the conditions mentioned in Section 28AB do not get incorporated in Rule 8. Rule 8 applies by its own force and on its own strength. Reference to Section 28AB in Rule 8 is only for the purpose of rate of interest. The rate of interest payable under Rule 8 was/is the rate of interest fixed by the notification issued u/s 28AB. It is to or for this limited extent, reference is made to the notification issued u/s 28AB. Clearly, therefore, the petitioner was liable to pay interest under Rule 8 at the rate as was fixed by the applicable notification u/s 28AB. We do not find any merit in the present writ petition and the same is dismissed. No costs.