

M/S. O.N.G.C. LTD.
v
COMMNR. OF CUSTOMS, MUMBAI

A

AUGUST 1, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

B

Interest—Claimed on the amount realised as customs duty which was ultimately refunded to assessee—Held: In principle as also in equity, assessee is entitled to interest on the amount deposited on application of principle of restitution—Having regard to the fact that the amount paid by assessee has already been refunded, the amount deposited by assessee shall carry interest @ 6% per annum—Principle of restitution—Customs duty—Interest on—Equity.

C

Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission, [2003] 8 SCC 593 and McDermott International Inc. v. Burn Standard Co. Ltd. & Ors., (2006) 6 SCALE 220, relied on.

D

South Eastern Coalfields Ltd. v. State of M.P. and Ors., [2003] 8 SCC 648, referred to.

E

CIVIL APPELLATE JURISDICTION

I.A. No. 4

IN

Civil Appeal No. 1882 of 2004.

F

From the final Order Nos. C-II/32-19/WZV/2003 dated 09.12.2003 in Appeal No. 51/2002 passed by the customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai

G

WITH

I.A. No. 4 in Civil Appeal No. 854 of 2005.

H

A S. Ganesh, Shiv Praksah Pandey, Rekha Pandey and Raj Kumar Tanwar, for the Appellant.

Rajiv Dutta, M.F. Humayunisa, Subha Rao and B. Krishna Prasad for the Respondent.

B The Order of the Court was delivered by

ORDER

C S.B. SINHA, J. Appellant is a public sector undertaking wholly owned and controlled by the Central Government. It obtained the services of M/s. SEDCO Forex Int. Drilling Inc. for obtaining requisite information which would assist it in the matter of exploration of oil and gas. The information so gathered was recorded in 3-D Seismic Tapes. On the amount paid therefor, custom duty was sought to be levied. An exemption was claimed by the appellant from payment of custom duty in terms of an exemption notification issued by the Central Government in that behalf. As despite such claim, assessment proceedings were initiated and completed, the matter came upto this Court and by a judgment and order dated 24.08.2006, contention of the appellant was accepted by this Court and the orders of assessment were set aside.

E During pendency of the Civil Appeals before this Court, a sum of Rs. 54,72,87,536.00 was realised by way of custom duties and interest thereon, etc. as per the following details:

F	(i)	14.09.2004	Rs. 25,00,00,000.00 adjusted towards duty
	(ii)	30.03.2004	Rs. 17,72,87,536.00 appropriated towards interest
	(iii)	24.02.2005	Rs. 12,00,00,000.00 adjusted towards interest

Total Rs. 54,72,87,536.00"

G An application has now been filed for a direction to the respondent to pay interest on the said sum with effect from the date of recovery till the date of the appellant.

H Mr. S. Ganesh, learned senior counsel appearing on behalf of the Appellant, would submit that keeping in view the fact that the appellant had

to deposit a huge amount during pendency of the Civil Appeals, interest of justice would be met if this Court directs the respondent to pay interest at the rate of 12% per annum on the said amount. It was submitted that interest should be directed to be paid by way of restitution, as has been held by this Court in *South Eastern Coalfields Ltd. v. State of M.P. and Ors.*, [2003] 8 SCC 648. A

Mr. Rajiv Dutta, learned senior counsel appearing on behalf of the respondent, on the other hand, would submit that the Central Government did not make any investment of the amount received by it by way of indirect tax but expended the same for the welfare of the people and, thus, no interest should be directed to be paid in the instant case. B

Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to *Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission*, [2003] 8 SCC 593 and *Mcdermott International Inc. v. Burn Standard Co. Ltd. & Ors.*, (2006) 6 SCALE 220. C D

Respondent, therefore, is directed to pay a sum of Rs. 9,51,21,999.50/- by way of interest. Such amount should be paid within a period of six weeks from date. The application is disposed of accordingly. No costs. E

R.P.

Interlocutory application disposed of.