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UNION OF INDIA & ANR.

v.

SHREEJI COLOUR CHEM INDUSTRIES
(Civil Appeal No. 5643 of 2008)

B

SEPTEMBER 15, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

C

Central Excise Act, 1944 – s.11BB – Interest for delayed refund of amount payable under the Act and the Rules – Entitlement to – Held: On facts, assessee entitled to interest from 12th April, 2004 to 26th August, 2004 – Claim of assessee for equitable interest, however, not tenable, since assessee made no written demand therefor – Central Excise Rules, 1944 – r.173L.

D

Respondent claimed refund of amount payable under the Central Excise Act, 1944 and the Central Excise Rules, 1944. The claim was rejected by the Assistant Commissioner and the Commissioner, but upheld by the Appellate Tribunal.

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Respondent was subsequently sanctioned refund on 27th August, 2004. Earlier, on 12th January, 2004, Respondent had filed application claiming statutory interest for delay in refund. The High Court granted interest at the rate of 9% w.e.f. the first day on which the Asstt. Commissioner rejected the prayer for refund.

F

Aggrieved, Appellant contended before this Court that interest became payable only after three months from the date of application for interest. Appellant also contested claim for equitable interest by the Respondent.

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Partly allowing the appeal, the Court

HELD: In terms of s.11BB (1) of the Central Excise

H

Act, 1944, Respondent-assessee is entitled to interest from 12th April, 2004 to 26th August, 2004. As regards claim of interest on equitable ground, a written demand therefor is imperative. In the instant case no such written demand was made. [Paras 9,10] [507-C & D] A

Modi Industries Ltd., Modinagar & Ors. v. Commissioner of Income Tax, Delhi & Ors. [1995 (6) SCC 396] and Clariant International Ltd. v. Securities and Exchange Board of India, 2004 (8) SCC 524 – relied on. B

Sandvik Asia Ltd. v. Commissioner of Income Tax I, Pune and Ors. [2006 (2) SCC 508] – referred to. C

Case Law Reference

2006 (2) SCC 508	referred to	Para 3
1995 (6) SCC 396	relied on	Para 7
2004 (8) SCC 524	relied on	Para 8

 D

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5643 of 2008

From the Final Judgment and Order dated 3.3.2006 of the High Court of Gujarat at Ahmedabad in S.C.A. No. 1315/2006 E

Naresh Kaushik, Asha G. Nair and B. Krishna Prasad for the Appellants. F

Dayan Krishnan, Ankul Saigal, Bina Gupta and Gaurav Singh for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted. G

2. Challenge in this appeal is to the judgment of a Division Bench of the Gujarat High Court directing grant of interest to the respondent for alleged delayed refund of amount payable under Central Excise Act, 1944 (in short the 'Act') and Central Excise Rules, 1944 (in short the 'Rules'). H

A 3. Background facts are undisputed and are essentially as follows:

B Refund was claimed by the respondent before the Assistant Commissioner, Central Excise and Customs Division IV, Vadodara, for refund of Rs.2,50,494.31. The applications which were filed under Rule 173L of the Rules were rejected by the Assistant Commissioner by order dated 24.7.1991. Being aggrieved by the said order, respondent preferred an appeal before the Commissioner of Appeal, Mumbai who remitted the matter for de novo consideration. After hearing the respondent, C the said applications were again rejected. Respondent again preferred an appeal on 21.5.1996 before the Commissioner of Appeal which was dismissed by order dated 31.8.1998. Being aggrieved by the said order, the respondent preferred an appeal before the Customs Excise and Gold Control Appellate Tribunal West Regional Bench (in short the 'CEGAT'). By order dated 25.11.2003 CEGAT allowed the appeal and *inter alia* held as follows:

E "I find no reason to reject the claims of refund under Rule 173L amounted to Rs.2,50,454/- in all. The same should be paid to the appellant without delay."

F The respondent filed an application before the Assistant Commissioner on 12.1.2004 requesting for refund of the amount along with statutory interest which became payable from 26.8.1995. By order dated 27.8.2004 the Deputy Commissioner sanctioned the refund of Rs.2,50,394/-.

G A writ petition was filed against the said order dated 27.8.2004 praying for grant of interest. The High Court directed grant of interest with effect from 24.7.1991 i.e. the first day on which the Assistant Collector rejected the prayer for refund. It is to be noted that Section 11 BB of the Act was introduced with effect from 26.5.1995. The High Court by the impugned order directed grant of interest as per the provisions of Section 11 BB of the Act. Though in the original order paras 12 & 17 it was H noted that the respondent had a right to get the amount of inter-

est within two months from 21.5.1996, and entitled to interest at the rate of 9% p.a. for the period of three months commencing from 21.5.1996, it was subsequently corrected by order dated 15.6.2006 substituting the date 24.7.1991 for 21.5.1996. In other words according to the High Court the respondent was entitled to interest at the rate of 9% from 24.7.1991 irrespective of the date when Section 11 BB was inserted. The High Court primarily relied on a decision of this Court in *Sandvik Asia Ltd. v. Commissioner of Income Tax I, Pune & Ors.* [2006(2) SCC 508].

4. Learned counsel for the appellant submitted that the High Court has clearly lost sight of the fact that after introduction of Section 11 BB the position relating to grant of interest has got crystalised and the grant of relief from the first date on which the application for refund was rejected cannot be sustained. It is submitted that Section 11BB makes the position clear that only after three months from the date of application interest becomes payable. Reference is also made to Section 11(d) of the Act. It is pointed out that the prayer of the respondent should not have been accepted because Rule 173L was not in existence and the prayer of the assessee was not in terms of Section 11BB.

5. It is submitted that in any event in case of statutory interest question of any equitable interest is not applicable.

6. Learned counsel for the respondent on the other hand submitted that equitable interest is also payable. With reference to the proviso to Section 11(d)(1) and 11(d)(2) it is submitted that the application which was filed in terms of Rule 173L has to be deemed to be an application under Section 11(d). It is pointed out that the Deputy Commissioner in its order has referred to the earlier refund claims.

7. A three-Judge Bench of this Court in *Modi Industries Ltd, Modinagar & Ors. v. Commissioner of Income Tax, Delhi & Ors.* [1995(6) SCC 396] dealt with the position relating to grant of statutory interest. In paras 58 & 59 it was inter alia observed as follows:

A "58. The argument, which was upheld in some of the cases
now under appeal, is that it will be inequitable if the
assessee does not get interest on the amount of advance
B tax paid, when the amount paid in advance is refunded
pursuant to an appellate order. This is not a question of
equity. There is no right to get interest on refund except as
provided by the statute. The interest on excess amount of
advance tax under Section 214 is not paid from the date
of payment of the tax. Nor is it paid till the date of refund.
C It is paid only up to the date of the regular assessment. No
interest is at all paid on excess amount of tax collected by
deduction at source. Before introduction of Section 244(1-
A) the assessee was not entitled to get any interest from
the date of payment of tax up to the date of the order as
a result of which excess realisation of tax became
D refundable. Interest under Section 243 or Section 244
was payable only when the refund was not made within
the stipulated period up to the date of refund. But, if the
assessment order was reduced in appeal, no interest was
payable from the date of payment of tax pursuant to the
E assessment order to the date of the appellate order.

F 59. Therefore, interpretation of Section 214 or any other
section of the Act should not be made on the assumption
that interest has to be paid whenever an amount which
has been retained by the tax authority in exercise of statutory
power becomes refundable as a result of any subsequent
proceeding."

G 8. In *Clariant International Ltd. v. Securities and Ex-
change Board of India* [2004(8) SCC 524] it was observed as
follows:

H "30. Interest can be awarded in terms of an agreement or
statutory provisions. It can also be awarded by reason of
usage or trade having the force of law or on equitable
considerations. Interest cannot be awarded by way of
damages except in cases where money due is wrongfully

withheld and there are equitable grounds therefor, for which A
a written demand is mandatory.

31. In absence of any agreement or statutory provision or B
a mercantile usage, interest payable can be only at the
market rate. Such interest is payable upon establishment
of totality of circumstances justifying exercise of such
equitable jurisdiction. (See *Municipal Corpn. of Delhi v.*
Sushila Devi ^[1999(4)SCC 317], SCC para 16.)”

9. As was observed in para 30 referred to above, if the C
claim of interest is on equitable ground, a written demand therefor
is imperative.

10. In the instant case admittedly no such written demand D
has been made. In terms of Section 11BB (1), the respondent-
assessee is entitled to interest from 12th April, 2004 to 26th Au-
gust, 2004. The quantum shall be worked out and the amount
shall be paid within a period of four weeks. The order of the
High Court is accordingly modified and the appeal is allowed
to the aforesaid extend. No costs.

B.B.B.

Appeal partly allowed.

TUKARAM MARUTI CHAVAN E

v.