

Satellite Engineering Ltd. Vs. Asstt. Collector of Central Excise

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Court : Gujarat

Decided On : Mar-06-1991

Reported in : 1991LC387(Gujarat); 1992(58)ELT503(Guj)

Judge : A.P. Ravani and; J.N. Bhatt, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 11B and 40; [Constitution of India](#) - Article 226

Appeal No. : Special Civil Application No. 998 of 1980

Appellant : Satellite Engineering Ltd.

Respondent : Asstt. Collector of Central Excise

Advocate for Def. : B.B. Naik, Adv.

Advocate for Pet/Ap. : J.G. Shah, Adv.

Judgement :

Ravani, J.

1. The petitioner company manufactured Fluorescent Starter Switches. While manufacturing this product, Aluminium Cannisters were also being manufactured as intermediate product which were derived either from aluminium slugs or from aluminium strips by process of extrusion, trimming, knurling and cutting. According

to the petitioner aluminium cannisters were not excisable goods and the petitioner was not liable to pay duty of excise on the same. The dispute was carried upto the Government of India by way of revision as per the relevant provisions of law which were in force at the relevant time. The Government of India by order dated December 12, 1975 held that aluminium cannisters were ancillary to the manufacture of fluorescent starter switches and that the goods were extruded, but the same were not bought or sold in the market. For the reasons mentioned in the order, the Government of India allowed the revision application.

2. Thereafter the petitioner preferred refund claim for Rs. 53,750/- before the Assistant Collector, Central Excise, Division III, Ahmedabad in relation to the period commencing from October 7, 1970 to February 29, 1976. The Assistant Collector rejected the claim as per order dated May 18, 1978. The petitioner preferred appeal before the Collector (Appeals). The Collector (Appeals) allowed the same as per order dated December 13, 1979. Thus, according to the appellate order, the petitioner was entitled to receive the amount claimed as and by way of refund.

3. Thereafter the petitioner requested the appropriate authority of the excise department to pay the amount of Rs. 53,750/-. However, the respondent authorities did not respond favourably. Hence the petition praying that the respondents be directed to pay the amount of Rs. 53,750/- with 18 per cent interest.

4. The petitioner has also prayed for an amount of Rs. 10,217.53 ps. However, the learned counsel for the petitioner has submitted that the petition is confined to the prayer with regard to Rs. 53,750/- only and therefore we do not refer to the claim of Rs. 10,217.53 ps.

5. The learned counsel for the petitioner has submitted that as per letter dated August 9, 1988, an amount of Rs. 53,468.55 ps. has been paid to the petitioner. According to the learned counsel for the petitioner, there may be some error in calculation of the amount to be refunded and hence the minor discrepancy between the amount claimed and the amount refunded. As regards this discrepancy is concerned, no submissions are made. In our opinion also, on

account of this discrepancy the difference is about Rs. 281/- and the same can very well be ignored.

6. The learned counsel for the petitioner submits that there is inordinate delay in honouring the order passed by the appellate forum. Even after several requests the amount was not paid. Hence the petition was filed on April 8, 1980. The petition has been admitted on June 14, 1980. Even so, the amount has been paid some time in August, 1988. Therefore, the learned counsel for the petitioner submits that interest should be awarded at the rate of 18% to the petitioner.

7. In support of the claim of interest, the learned counsel for the petitioner has relied upon a decision of this High Court in the case of *M/s. Vijay Textile v. Union of India* reported in 20 GLR page 944. It was a case of alleged unauthorised levy of excise duty. While upholding the claim of the petitioner, this court held that the amount of duty was collected illegally by the Government and the same was retained by the Government unauthorisedly. Therefore, while allowing the petition, the court directed that the amount should be refunded with interest. However, this decision is of no help to the petitioner in view of the fact that the same is reversed by the Supreme Court in the case of *M/s. Ujagar Prints v. Union of India* reported in : [1989]179ITR317a(SC) . It may be that the Supreme Court might not have touched the question with regard to the claim of interest because the decision itself has been reversed and set aside. Once the decision is reversed and set aside, it is immaterial on which point the decision is reversed because on reversion of the decision, it ceases to be a good decision in the eye of law. Therefore, the decision of this High Court in the case of *Vijay Textile (supra)* is of no help to the petitioner.

8. The learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of *India Cement Ltd. v. Collector of Central Excise* reported in : 1989(41)ELT358(SC) . Therein the Supreme Court has awarded 6% interest while allowing the claim of refund. In the last para of the judgment, the Supreme Court directed that the appeal be allowed and the orders passed by the Tribunal and other authorities be set aside and declared that the appellant was entitled to refund of the amount and the appellant shall be paid interest at the rate of 6% from the date of refusal of refund with costs of appeal quantified at Rs.

10,000/-. Therein the claim for refund of the Cement Company was rejected by the Assistant Collector and the Collector (Appeals) on the ground of limitation. The Tribunal also maintained the decision of the departmental authorities. In the facts of the case, the Supreme Court held that the duty was paid under protest and therefore the question of limitation did not arise for refund of duty. Nowhere in the judgment there is discussion with regard to the claim of interest by the assessee and the liability of the department to pay interest. It is only in the last para of the judgment, direction as regards the payment of interest is given. In this view of the matter, it is submitted by the learned counsel for the respondent that the question as regards the right of the assessee to claim interest on the amount of duty unauthorisedly collected and retained and the liability of the revenue to refund the same with interest never arose. Therefore, the direction given by the Supreme Court to pay interest at the rate of 6% in that case is not a decision on the question with regard to the rights and liabilities of respective parties as regards the claim of interest.

9. The learned counsel for the respondents has drawn our attention to a decision of the Supreme Court in the case of M/s. Goodyear India Ltd. v. State of Haryana reported in : [1991]188ITR402(SC) . In para 23 of the judgment, the Supreme Court has observed that 'it is well settled that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it'. In para 34 of the judgment it is further observed as follows :-

'A decision on a question which has not been argued cannot be treated as a precedent.'

These observations have been made by Supreme Court following its observations made in the case of Rajpur Ruda Meha v. State of Gujarat reported in : 1980 CriLJ1246 . In the case of India Cement Ltd. (supra) the question with regard to claim of interest and rights and liabilities of respective parties with regard to amount of interest was never argued. Of course there is direction to pay interest in the operative portion of the judgment. But this direction is in the nature of awarding of costs. In view of the above referred Supreme Court decisions regarding precedents, there is much substance in the arguments advanced by the learned

counsel for the respondents that the Supreme Court has not decided the issues as regards the claim of interest and rights and liabilities of respective parties for payment of amount of interest.

10. In the instant case, there is another difficulty in the way of the petitioner. When the Collector (Appeals) allowed the claim of refund, he has not directed that the amount of refund to be paid with interest. Having regard to the overall facts and circumstances of the case, it is evident that the petition is in the nature of execution proceeding. Since the petitioner could not receive its money even after adjudication of its claim, the petitioner has resorted to the extra-ordinary remedy under Article 226/227 of the [Constitution of India](#) for direction against respondents for making payment of the amount of refund which was adjudicated in its favour. Thus if the petition is in the nature of execution proceedings, the question arises - can a court which is exercising powers to execute and/or implement the award or direction, go behind the order or direction and say that the amount in question be paid together with interest Such a question arose before the Supreme Court in the case of State of Punjab v. Krishan Dayal Sharma reported in : AIR 1990 SC2177 . Therein the Supreme Court has observed as follows :

'In the absence of pleadings and directions in the judgments or decree which was under execution, it was not open to the executing court to award interest. The Execution Court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice.'

In our opinion as regards the claim of interest is concerned, the principle laid down by the Supreme Court in the aforesaid case would be applicable to the facts and circumstances of the present case also. When the Collector (Appeals) allowed the claim of refund, he has not directed that the amount of refund be paid together with interest. Therefore, the petitioner cannot be awarded interest in this petition under Article 226 of the [Constitution of India](#) which is essentially filed for the purpose of execution of the order passed by the Collector (Appeals).

11. Reference may be made to a decision of the Bombay High Court in the case of Municipal Borough, Ahmedabad v. Vadilal reported in AIR (31) 1944 Bombay page 233. In that case the question arose as to whether the tax payer was entitled to

claim refund with interest on the amount of tax illegally recovered. The lower court had allowed the claim of interest made by the tax payer. Beaumont C.J. reversed the judgment of the trial court and held that interest can be claimed only in circumstances provided under the Interest Act. Negating the contention that the interest can be claimed on the principle of justice, equity and good conscience, it is *inter alia* observed that interest cannot be allowed by way of damages. It may be allowed where there is an agreement for the payment of interest or it is payable by the usage of trade having the force of law. It is also held that the claim of interest would not be maintainable even in tort. Reference was made to Section 206 of Bombay Municipal Boroughs Act, 1925 which protected the Municipality and its officers for actions taken in good faith. We are in respectful agreement with this decision of the Bombay High Court. Similar is the provision in Section 40 of the Central Excises and Salt Act, 1944 which protects the Government and its officers for anything which is done or intended to be done in good faith in pursuance of the Act and the rules framed thereunder. It cannot be said that the duty of excise was not recovered from the petitioner in good faith. It is not even the case of the petitioner that the department lacked in good faith and acted with *mala fides* in recovering the amount of duty from it. On this count also, the petitioner has no case for claiming the amount of interest.

12. However, the facts of the case are little shocking. The order for refund of the amount was passed by the Collector (Appeals) on December 11, 1979. The petitioner requested for payment of the amount to the appropriate authorities of the department. Since the petitioner could not receive amount, it has filed this petition some time in the month of April 1980. As indicated hereinabove, the petition was admitted in July 1980. Even so, the amount was not paid till August 1988. There is no explanation, much less reasonable explanation as to why such an inordinate delay has taken place in making the payment of amount ordered to be refunded. Even after the petition was filed, a period of about eight years has been taken for making the payment of the refund claim. Such an indifferent and complacent attitude on the part of the Government with regard to payment of refund claim cannot be countenanced. Therefore, in our opinion, the respondents should be saddled with exemplary costs. Having regard to the overall facts and circumstances of the case, we are of the opinion that the petitioner should be

awarded cost of Rs. 5,000/-.

13. In the result, since the petitioner has received an amount of Rs. 53,468.55 ps. no order as regards the payment of principle amount is passed. As regards the claim of interest is concerned, the same is also rejected. However, in the facts of the case, the respondents are directed to pay an amount of Rs. 5,000/- (Five thousand) as and by way of cost to the petitioner. It is directed that the amount of cost shall be paid to the petitioner latest by June 15, 1991. If the amount is not paid by June 15, 1991, it shall carry interest at the rate of 15% from June 15, 1991 onwards till the date of actual payment. Rule is made absolute to the aforesaid extent.

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