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Court : Gujarat

Decided On : Jul-12-2000

Reported in : 2005(188)ELT21(Guj); (2001)GLR36

Judge : B.C. Patel and; P.B. Majmudar, JJ.

Acts : Constitution of India

Appeal No. : Special Civil Application Nos. 6020, 6179 and 6180 of 2000

Appellant : Atul Limited

Respondent : Commissioner

Advocate for Def. : Akshay Mehta, Senior Counsel and; Mukesh R. Shah for, Adv. Respondent No. 1, 2

Advocate for Pet/Ap. : Party-in-person

Disposition : Petitions allowed

Judgement :

B.C. Patel, J.

1. Rule. Mr. Mukesh R. Shah waives service of rule for the respondents.

2. The petitioner in each of the matters has brought to our notice following facts :-

There were 51 Adjudication Orders in all the three matters and on different dates, the amount by way of pre-deposit came to be deposited. In all the cases, decisions have been rendered by the Commissioner (Appeals) in favour of the petitioner and thus, the petitioner is entitled to get the refund of the amount deposited by way of pre-deposit.

3. So far as Special Civil Application No.6020 of 2000 is concerned, the order is made by the Commissioner on 11th May, 1999. Thereafter, the petitioner preferred claim for refund on or about 10th July, 1999. Against the order passed by the Commissioner, no doubt, appeal has been preferred by the Revenue. However, no stay application has been submitted and thus, the order passed by the Commissioner is not stayed by the Tribunal and, therefore, under the order passed by the Commissioner, the Revenue is duty-bound to make the payment, as contemplated under the Act, viz., Central Excise Act, 1944.

4. In Special Civil Application No.6179 of 2000, against the order passed by the Commissioner (Appeals), appeal was preferred by the Revenue before the Tribunal, which was rejected. However, later on, the appeal has been restored on 3rd May, 2000. No stay has been granted by the Tribunal. In this matter, the order was passed by the Commissioner on 19th August, 1999 and application for refund was submitted on 9th September, 1999. Despite the fact that there is no stay order against the order passed by the Commissioner, the Revenue has not bothered to make the payment despite the application.

5. In Special Civil Application No.6180 of 2000, the appeal was disposed of by the Commissioner (Appeals) on 19th August, 1999. Application for refund was made on 9th September, 1999. Within three months, no stay was granted by the Tribunal. In this case, despite the fact that the stay application has been rejected by the Tribunal on 3rd May, 2000, till this date, the respondents have not cared to make the payment. It is an admitted position that the petitioner is entitled to get the amount, which has been deposited by way of pre-deposit. Our attention is drawn to a reported decision of the Apex Court in case of Mahavir Aluminium Ltd. v. Collector of Central Excise, Jaipur, 1999(114) ELT 371 (SC). It is submitted that in view of this decision, it was the duty of the respondents to make the payment. The

statute has been interpreted. It is made known to the worthy Officers by several Circulars. Circular dated 30.5.1995 reads as under :-

'... Your attention is invited to the Finance Act, 1995 wherein a new Section 11BB under the Central Excise & Salt Act, 1944 has been inserted regarding interest on delayed refunds. With the enactment of the Finance Act, the Department has become liable to pay interest at the prescribed rate in case of various types of refund which are not processed within three months from the date of the receipt of refund applications under Section 11BB of CE&SA;, 1944, till the date of refund of such duty. In this regard, you may also refer to Notification No.22/95-C.E., dated 29.5.1995 which fixed such interest @ 15% .... '

6. Another Circular dated 2.6.1998 reads as under :-

'... I am directed to say that it has been observed by the Board that there is considerable delay in disposal of refund/rebate claims. You may recall that the provisions have been made in the Central Excise Act, 1944 to grant interest if the refund claim is not sanctioned within 3 months from the date of receipt of the application. In view of this, it is absolutely necessary that the refund claims should be disposed of within three months.

2. In this regard, the Board's directions are as follows :-

(a) responsibility should be fixed for not disposing of the refund / rebate claims within 3 months from the date of application.

(b) no refund / rebate claim should be withheld on the ground that an appeal has been filed against the order giving the relief, unless stay order has been obtained. It would be the responsibility of the concerned Commissioner to obtain stay order expeditiously where the orders by Commissioner (Appeals) or CEGAT suffer from serious infirmities and it involves grant of heavy refunds.

(c) no refund / rebate claim should be withheld on the ground of augmentation of revenue in order to achieve targets.

3. It should be ensured that the Board's aforesaid directions are followed scrupulously by all officers .... '

7. The Officers of the Revenue are informed by the Central Board of Direct Taxes that no refund / rebate claim should be withheld on the ground that an appeal has been filed against the order giving the relief, unless stay order has been obtained. This Circular has been published on 2.6.1998. Despite this, the petitioner is required to rush to this Court as the Department has become deaf and is not replying to the petitioner. Mr. M.R. Shah, appearing for the Revenue, in one matter, viz., Special Civil Application No.6020 of 2000, submitted that in this case, application has been granted on condition that the bank guarantee of 25% of the amount should be furnished by the petitioner and they should also furnish the bond of the full amount. Under what provision this demand was made is not explained to us. Thus, one way or the other, the officers of the Revenue are withholding the amount and though the citizens have legitimate claim, they are compelling them to rush to the Court.

8. The Revenue is required to pay the amount of pre-deposit with interest as the erring officer has either omitted to act in accordance with law or has neglected to discharge his duties by not passing an appropriate order in accordance with law. What could be the purpose in not paying the amount to the legitimate claimant? Revenue will have to pay interest on the amount as there is failure on the part of the Officer to act with promptness as expected by the Central Board of Direct Taxes and the Officer has neglected to follow the statute which requires serious attention. Why people who are entitled to get their own money after the quasi-judicial proceedings are terminated in their favour should not get immediately or as pointed out, within three months? Why Nation should suffer because the Officer is neglecting? The Officer who is discharging his duties should be held responsible. The petitioner waited for almost one year and, thereafter, had approached the Court. During all these days, what action has been taken by the Officer concerned?

9. It is under these circumstances we direct the Chief Commissioner, Central Excise, Race Course Road, Vadodara to hold an enquiry and to recover the

amount of interest from the erring officer which is required to be paid to the petitioner. Before us, request is made that the order would be harsh and excessive. We are passing this order because since 1998, Central Board of Direct Taxes has pointed out to the Officers that responsibility should be fixed for not disposing of the refund / rebate claims within three months from the date of application and no refund / rebate claim should be withheld on the ground that an appeal has been filed against the order giving relief unless stay order has been obtained. Despite the Circulars, which are required to be respected by the Subordinate Officers, the officers are not paying any heed to it, hence it becomes the duty of the Chief Commissioner to initiate action. The Chief Commissioner shall report to this Court about the action taken and the result of the enquiry within a period of three months. The respondents are directed to make the payment in accordance with law within a period of a fortnight, failing which interest will be calculated at the rate of 18% per annum.

10. Petitions are allowed. Rule is made absolute accordingly. No costs.