

Union of India

Vs

Orient Enterprises

(S. C. Agarwal, S. Saghir Ahmad JJ)

04.04.1998

JUDGMENT

S.C. AGARWAL J

1. The common question that falls for consideration in these appeals is whether a writ petition under Article 226 of the Constitution of India seeking the relief of payment of interest on delayed refund of the amount paid by the assessee towards the customs duty, redemption fine and penalty under the Customs Act, 1962 (hereinafter referred to as 'the Act') was maintainable.

Civil Appeal No. 3374/91.

2. M/s. Orient Enterprises, respondent No. 1, had imported consignments of skimmed milk powder from Canada. The Collector of Customs, Cochin, issued show cause notice on the basis that there was under valuation of the prices in the invoices. The Collector of Customs passed an order for confiscation of the goods but permitted the respondents to redeem the goods on payment of redemption fine of Rs. 8,00,000/-. A penalty of Rs. 2,00,000/- was also imposed. On the basis of the higher price of goods, as assessed, the respondents were also required to pay the differences in customs duty to the extent of Rs. 34,464,23. The assessee filed an appeal against the said order of the Collector of Customs before the Central Board of Excise and Customs (hereinafter referred to as 'the Board'). The said appeal was dismissed by the Board. Thereafter the assessee filed a revision petition before the Central Government which was transferred to the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Tribunal') and it was treated as an appeal by the Tribunal. By order dated August 14, 1985 the Tribunal allowed the appeal and held that the goods had been lawfully imported and the valuation declared was correct. The appeal filed by the Revenue against the said judgment of the Tribunal was dismissed by this Court on December 10, 1996. After the passing of the adjudication order by the Collector the respondents deposited a sum of Rs. 10,34,464,23 on August 29, 1979. Since the said amount that was deposited by the respondents was not refunded to them after the judgment of the Tribunal dated August 14, 1985, the respondents approached the Tribunal for directions regarding the refund of the said amount and the Tribunal, by order dated May 8, 1987 directed the Collector of Customs Cochin, to refund the said amount of Rs. 10,34,464,23 within a period of 60 days. The said amount was refunded on August 29, 1987. On November 21, 1989 the writ petition which has given rise to this appeal was filed by the respondents in the Delhi High Court. In the said writ petition the respondents sought the relief of payment of interest on the amount of Rs. 10,34,464,23 for the period from the date of payment of the said amount till the date on which it was refunded to the respondents. The said writ petition of the respondents has been allowed by the High Court by Judgment dated May 10, 1991. The High Court has directed the appellants to pay interest @ 12% per annum to the respondents on the sum of

Rs. 10,35,000/- from the date of the filing of the revision application before the Central Government till the date of payment.

3. Shri R. Mohan, the learned senior counsel appearing for the appellants has urged that the High Court was in error in entertaining the writ petition and giving directions regarding payment of interest on the amount that was collected from respondent No. 1 on the basis of the order of Collector of Customs and which was subsequently refunded to them in pursuance of the judgment of the Tribunal. The submission is that under the provisions of the Act, as they stood at the relevant time there was no provision for payment of interest on the amount collected on the basis of an order passed under the Act and which was subsequently required to be refunded and that such a provision for payment of interest on the amount of duty that is refunded has been introduced by Section 27-A which was inserted in the Act by Act No. 22 of 1995. It has also been pointed out that in the affidavit filed on behalf of the appellants in reply to the show cause notice in the writ petition before the High Court it was stated :

"It is further submitted that the Customs Department does not charge any interest on the short payment of duty on goods imported or exported. No interest is charged on delayed payment of fine or penalty imposed on the importer/exporter for violations of the provisions of the Customs Act, 1962. Similarly, no interest can be paid on the amount refunded in pursuance of the order-in-appeal."

4. Shri Mohan has placed reliance on the decision of the Constitution Bench of this Court in *Suganmal Vs. State of Madhya Pradesh & Ors.* AIR 1965 SC 1740 wherein this Court has held that a writ petition under Article 226 of the Constitution of India solely praying for the issue of a writ of mandamus directing the State to refund the money alleged to have been illegally collected by the State as tax is not ordinarily maintainable.

5. Shri G.L. Rawal, the learned counsel appearing for the respondents has, however, submitted that since the amount of Rs.10,34,464,23 had been illegally collected from them and was retained by the Revenue, the respondents are entitled to payment of interest on the said amount for the period the respondents were deprived of the said amount and that the High Court was justified in entertaining the writ petition and directing payment of interest. The learned counsel has placed before us the judgments of the various High Courts in which directions have been given for payment of interest while directing refund of tax illegally collected from the assessee.

6. In *Suganmal* (supra) this Court has laid down that a writ petition under Article 226 of the Constitution solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. This Court has made a distinction between a direction for refund given by way of consequential order in a case where the legality of the assessment is questioned and a case where the petition is only for the purpose of seeking refund. It has been observed :-

"We do not consider it proper to extend the principle justifying the consequential order directing the refund of amount illegally realised, when the order under which the amount had been collected has been set aside, to cases in which only orders for the refund of money are sought. The parties had the right to question the illegal assessment orders on the ground of their illegality or unconstitutionality and, therefore, could take action under Article 226 for the protection of their fundamental

right and the Courts, on setting aside the assessment orders, exercise their jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this principle and, therefore, hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right."

7. The Court has emphasised that there was no legal right in the appellant who had filed the writ petition to claim the refund under the relevant statute.

8. In the present case also till the insertion of Section 27-A in the Act by Act 22 of 1995 there was no right entitling payment of interest on delayed refund under the Act. Such a right was conferred for the first time by the said provisions. Act 22 of 1995 also inserted Section 28-AA which provides for payment of interest on delayed payment of duty by a person who is liable to pay the duty. Thus at relevant time there was no statutory right entitling the respondents to payment of interest on delayed refund and the writ petition filed by them was not for the enforcement of a legal right available to them under any statute. The claim for interest was in the nature of compensation for wrongful retention by the appellants of money that was collected from the respondents by way of customs duty, redemption fine and penalty. In view of the law laid down by this Court in *Suganmal* (supra) a writ petition seeking the relief of payment of interest on delayed refund of the amount so collected could not, in our opinion, be maintained. The decisions on which reliance has been placed by *Shri Rawal* were cases where the legality of the orders requiring payment of tax or duty were challenged and the High Court in exercise of its jurisdiction under Article 226 of the constitution, while setting aside the said orders, has directed the refund of the amount so collected with interest. The direction for payment of interest in these cases was by way of consequential relief along with the main relief of setting aside the order imposing the tax or duty. Those cases stand on a different footing and have no application to the present case. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondents before the High Court is dismissed. No order as to costs. Civil Appeal No. 914/92.

9. *Elapahnta Oil & Vanaspati Industries*, respondent No. 1 herein, was earlier known as *M/s. Jain Sudh Vanaspati Ltd.* The said respondent had imported inedible Beef tallow. The Collector of Customs, Bombay, after issuing show cause notice to the respondent passed the order dated May 28, 1983 whereby he held that the goods imported by the respondent were liable for confiscation as the import was contrary to the provisions of the Import Policy and gave option to the respondent to redeem the same on payment of redemption fine of Rs. 1,09,60,000/- The respondent deposited the said redemption fine and obtained the delivery of goods. The appeal filed by the respondent-company against the said order of the Collector was allowed by the Tribunal by judgment dated February 14, 1990. Special Leave Petitions Nos. 14605 and 14606/90 filed by the Revenue against the said judgment of the Tribunal were dismissed by this Court by Order dated November 19, 1990. The amount of Rs. 1,09,60,000/- which was deposited by the respondent-company was refunded to them in two installments on January 29, 1991 and March 6, 1991. Thereafter on May 31, 1991, the writ petition which has given rise to this appeal was filed by the respondents in the Delhi High Court. In the said writ petition the respondents sought the relief of payment of interest on the amount of Rs. 1,09,60,000/- from the date of deposit of the said amount till the date of refund @ Rs. 17.5% per annum or on such rate of interest not less than 12% per annum. The said writ petition of the respondents has been allowed by the High Court by the impugned judgment dated November 11, 1991 and the High Court has directed the appellants to pay to the respondents interest @ Rs. 17.5% per annum on the amount of Rs. 1,09,60,000/- from the date of deposit of the said amount till it was

refunded.

10. While dealing with Civil Appeal No. 3374/91 we have held that a writ petition seeking relief of interest in respect of the amount deposited towards redemption charges under an adjudication order which amount had been refunded after the said order was set aside could not be maintained under Article 226 of the Constitution of India. For the reasons given in the said judgment the impugned judgment of the High Court cannot be sustained and has to be set aside. The appeal is, therefore, allowed the impugned judgment of the High Court is set aside and the writ petition filed by the respondents is dismissed. No order as to costs.