AFR

Court No. - 34

Case :- WRIT TAX No. - 948 of 2015

Petitioner :- M/S Dabur India Limited

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Nishant Mishra,M.P. Devnath

Counsel for Respondent :- Ashok Singh

Hon'ble Sudhir Agarwal,J.

Hon'ble Dr. Kaushal Jayendra Thaker,J.

1. Heard Sri Nishant Mishra and Sri M.P. Devnath, learned counsels for petitioner and perused the record.

2. Question of classification of petitioner's product 'Gulabari' and rate of tax was in dispute between petitioner and Central Excise Department which was finalised by Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi vide judgment dated 14.01.2000, holding that product 'Gulabari' is not classified under Heading 33.03 of the First Schedule to Central Excise Tariff Act, 1985 (hereinafter referred to as 'Act 1985').

3. It is not disputed that in the meantime when such dispute was pending, Excise Authorities insisted upon petitioner to deposit excise duty by treating aforesaid product under classifiable Heading 33.03 and as a result whereof a total sum of Rs. 1,14,78,517/- was deposited by petitioner.

4. Once matter was decided by Tribunal and judgment attained finality, petitioner became entitled for refund. Hence application for refund was submitted by petitioner in prescribed proforma on 08.03.2000. The said application was rejected by Central Excise Authority and that matter went up to Customs, Excise & Service Tax Appellate Tribunal, New Delhi who allowed appeal of petitioner vide order dated 10.10.2003 and thereafter Assistant Commissioner passed another order dated 20.01.2006 holding that though

petitioner was entitled for refund but the same shall not be refunded for the reason that it is hit by clause of unjust enrichment. This order of Assistant Commissioner dated 20.01.2006 was confirmed by Commissioner (Appeal) whereagainst petitioner went to Tribunal who decided in favour of petitioner vide judgment dated 10.04.2008 and appeal preferred by Revenue was also dismissed by this Court vide judgment reported in 2014 (304) ELT 321 (All). It is only then, Assistant Commissioner passed order dated 17.07.2014 allowing refund but rejecting claim to pay interest on aforesaid amount.

5. Counsel for petitioner submitted that under Section 11BB of Central Excise Act, 1944 (hereinafter referred to as 'Act 1944'), any duty ordered to be refunded to any applicant, if not refunded within three months from the date of receipt of application, Assessee shall be entitled for interest on such rate not below ten percent and not exceeding thirty percent on the delayed amount.

6. In the present case, refund became due to petitioner after the matter was decided by Tribunal on 14.01.2000 whereupon an application was also submitted by petitioner on 08.03.2000 but for one or other reason, incorrect and illegal orders were passed by Revenue authority and could not defeat in even up to this Court, yet amount was refunded only in 20.01.2006 and that too without any interest.

7. Facts detailed above evidently show that respondent authorities were adamant in retaining huge money legally refundable to petitioner for one or the other reason which could not withstand when tested in Court i.e. Tribunal and this Court. Now respondents are trying to deprive petitioner, benefit of interest though respondents themselves were guilty by not refunding amount in due time and also withheld the same without any authority of law. In other words, here is a case, where respondents deprive petitioner of his property in a manner which was not permissible in law. Once it was held by Tribunal, vide judgment and order dated 14.01.2000

that product “Gulabari' was not classifiable under the Heading 33.03 of the First Schedule of Act 1985. Pursuant thereto petitioner submitted application for refund in prescribed form but the Revenue authorities again relying on Heading 33.03 rejected claim for refund and again lost before Tribunal who held vide order dated 10.10.2003 that once an issue was already decided by it, it was not open to departmental authorities to sit in appeal and reiterate their view which has not been found correct by Tribunal in its order dated 14.01.2000. Respondents therefore, had no authority in law to retain the amount realised from petitioner on and after the judgment dated 14.01.2000 passed by Tribunal and non refund thereof despite of application filed by petitioner in prescribed form under Section 11BB renders them liable to pay interest on refundable amount.

8. It is well established that no person can take advantage of his own fault.

9. In the present case, we find that respondents have retained huge money of petitioner without any authority of law and for their own fault are penalising the petitioner by denying due interest on the amount refundable to petitioner.

10. In **M.D., H.S.I.D.C. and Ors. vs. Hari Om Enterprises and Another, 2009 (16) SCC 208**, Court said “party cannot take advantage of its own wrong”. Same view was taken in **Badri Kedar Paper Pvt. Ltd. vs. U.P. Electricity Regulatory Commn. and others, 2009 (3) SCC 754** and **National Highways Authority of India and Anr. vs. Bumihiway DDB Ltd. (JV) and others, 2006 (10) SCC 763** and **India Household and Healthcase Ltd. Vs LG Household and Healthcare Ltd., 2007 (5) SCC 510**.

11. There is another aspect of matter, application for refund was filed by petitioner on 08.03.2000. Under Section 11 BB it is provided that if the authority is satisfied that an amount is to be refunded to Assessee but the same has not been refunded within three months from the date of filing of application, Assessee would be entitled for

interest. Order passed by Revenue authority under Section 11B(2) for refund is not relevant for the purpose of attracting interest under Section 11BB but what is said that once refund is found admissible, Assessee if has not been refunded the amount within three months from the date of receipt of application under sub Section (1), he shall be paid interest. Meaning that there is no time limit prescribed for taking a decision about refund but that law makes it very clear that amount if not refunded within three months from the date of receipt of application, interest shall be payable.

12. In our view, even if an order has been passed much later on, for the purpose of interest it will relate back and Assessee would be entitled for interest after three months from the date he has filed application under Section 11B.

13. In **Ranbaxy Laboratories Ltd vs Union Of India & others, 2011 (10) SCC 292** construing Section 11BB Court has said “interest under Section 11BB of Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11b of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.”

14. Recently, in **Union of India (UOI) and others Vs. Hamdard (Waqf) Laboratories, AIR 2016 SC 1124** Court held “...our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest Under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund Under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.”

15. Considering aforesaid exposition of law and factum that after the judgment of Tribunal dated 14.01.2000 petitioner was entitled for refund and he had also submitted application on 08.03.2000, pursuant whereto refund was not made within three months. In our view, petitioner would be entitled for interest under Section 11BB of Act 1944, after three months from the date of representation till the amount of refund actually paid.

16. In the result, writ petition is partly allowed. Respondents are directed to pay interest on the refunded amount for the period refund was delayed after three months from the date of application till it is actually paid.

17. Petitioner shall also be entitled to cost which we quantify to Rs. 25,000/-.

Order Date :- 12.9.2016
Pravin