

PETITIONER:
M/S GTC INDUSTRIES LIMITED

Vs.

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT: 04/03/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Mrs. Sujata V. Manohar, J.

Leave granted.

This appeal is against the judgment and order dated 14th of October, 1996 of the High Court at Bombay in Civil Writ Petition No. 1938 of 1982.

The appellant is a manufacturer of Cigarettes. Cigarettes so manufactured are liable to excise duty. It is the case of the appellant that till August 1972 he filed his price list on the basis of the price at which his goods were sold by the sole distributor to wholesalers, the appellant being under an erroneous impression that this was the price to be considered for the value of the goods for the purposes of excise duty. In August 1972, the appellant claimed that he discovered his mistake in not filing a price list on the basis of the price charged by the appellant to his sole distributor. Thereupon the appellant filed fresh price list from 1st of September, 1972 declaring the value of its product as the price at which the product was sold by the appellant to the distributors. The price list was approved.

In September 1973, the appellant filed a price list in which he sought reduction of post-manufacturing expenses from the value of his product. This request was rejected by the Assistant Collector of Central Excise. However, the Central Government ultimately granted a refund in respect of such post-manufacturing expenses but limited the period of refund to the period from 28.9.1971 to 31.8.1972. Thus, in respect of the change in assessing the value of the goods on the basis of the price which the appellant had charged to his distributors, as also in respect of the deduction of post-manufacturing expenses from such value, the appellant was granted relief for the said period.

On 11th of August, 1975 the appellant filed Writ Petition No.907 of 1975 before the Bombay High Court claiming a refund of excise duty for the period 1.3.1965 to 31.8.1972 on the basis that excise duty should have been levied on the basis of the value of their goods determined (1) on the basis of the price at which the appellant sold his product to his distributors and (2) the value of the product so determined should be reduced by the amount of

post-manufacturing expenses. In the writ petition the appellant excluded the period 28.9.1971 to 31.8.1972 for which the appellant had already received a favourable order from the Central Government. A learned Single of the High Court (Madon, J. as he then was), by his order dated 23.11.1981 allowed the writ petition. He directed the respondents i.e. the excise department to ascertain the amount due to the petitioners by way of refund under both these heads, by May, 10, 1982 and make payment to the petitioners within a period of three months or August 10, 1982 whichever was earlier. The respondents preferred an appeal - being Appeal No.382 of 1982 before the Division Bench of the High Court which was dismissed by the Division Bench by its order dated 27.8.1982.

Pursuant to the directions given by the High Court in its order of 23.11.1981 the Assistant Commissioner passed two orders in July 1982 calculating the amount of refund due and payable to the appellant. As per his first order which calculated the refund for the said period (1.3.1965 to 27.9.1981 excluding the period for which refund had already been received) in respect of the value of the goods being determined on the basis of the price charged by the appellant to his distributors, instead of the price charged by the distributors to the wholesalers, the refund calculated was Rs. 1,72,76,320.14. In the second order, which calculated refund on the basis of the reduction in the value of the goods by post-manufacturing expenses, the Assistant Collector calculated refund for the said period at Rs. 4,47,51,719.14. Under the second order, he calculated post-manufacturing expenses under three heads - (1) interest and bank charges relating to post-manufacturing expenses, (2) advertisement and publicity expenses, and (3) selling, distribution and marketing expenses. He held that post-manufacturing expenses under all these three heads were deductible from the assessable value for the purposes of excise, and thus calculated the above refund.

Under the said order of the High Court dated 23rd of November, 1981, the amounts so calculated by the Assistant Commissioner were to be paid on or before 10th of August, 1982. Since the amounts were not paid, the appellant filed Writ Petition No. 1938 on 17th of September, 1982 in the High Court for payment of Rs. 6,20,28,059.98 (there is a small discrepancy in the adding up of the said two amounts) together with interest.

On 21st of September, 1982 the High Court admitted the Writ Petition No. 1938 of 1982 and directed interim refund of the said amount against bank guarantees to be furnished by the appellant. The High Court did not pass any interim order in respect of the appellant's claim for interest but kept the question open at the stage of final disposal. Pursuant to the interim order of 21st of September, 1982 the said amount of Rs. 6,20,28,059.98 was withdrawn by the appellant against bank guarantees which were furnished on 1.11.1982. Clearly the above order was passed in view of the order of the High Court dated 23.11.1981 in Writ Petition No.907 of 1975, which was upheld by the Division Bench.

From the order of the Division Bench dismissing the appeal No. 398 of 1982 in Writ Petition No. 907 of 1975, the respondents had preferred a Special Leave Petition to this Court which was admitted. But no interim stay had been granted.

When the appeal from the Division Bench's judgment and order came up for hearing before this Court on 19.7.1995, this Court passed an order therein in the light of a

decision of this Court in Government of India vs. M.R.F.Limited (1995 (77) ELT page 433). This Court said that deduction in respect of freight and bank charges on discounting of bills will have to be considered in the light of the decision in the case of Government of India vs. M.R.F. Limited (Supra). It, therefore, remanded the matter to the Assistant Collector of Central Excise for the purpose of finalisation of the appellant's claim under the said head, namely, freight and bank charges. The appeal was accordingly disposed of. This order has been subsequently clarified on 28.2.1997 as not denying to the appellant, claims which had already been allowed earlier, since these were not the subject matter of this Court's order. Therefore, this court should not be taken to have rejected those claims. As a result of this order, the order dated 23.11.1981 in Writ Petition No.907 of 1975 was now replaced by the order of remand of this court dated 19.7.1995, confined to examination of the claim for deduction regarding freight and bank charges on bill discounting.

On 24.1.1996, in the light of the remand order of this Court, in original Writ Petition No. 907 of 1975, the High Court, by an interim order in Writ Petition No. 1938 of 1982 (which was for recovery of the amounts due under the order dated 23.11.1981 of the High Court), directed the appellant to return the amount of Rs, 6,20,28,059.98 earlier withdrawn by it. This order, however, was set aside by this Court on 16.8.1996. Thereupon, in September, 1996, the respondents took out a regular notice of motion before the High Court in Writ Petition No. 1938 of 1982 for the purpose of obtaining an interim order for the return of the said amount of Rs. 6,20,28,059.98. The motion was heard along with the main Writ Petition 1938 of 1982. The High Court by its order dated 14th of October, 1996 dismissed the Writ Petition No. 1938 of 1982, vacated the interim order passed on 21.9.1982 and directed the appellant to deposit the sum of Rs. 6.20.28,059.98 together with interest at the rate of 12% per annum from 1.11.1982. The present appeal has been filed from the above order of the High Court. Pursuant to interim orders passed in this Special Leave Petition, the respondents have encashed bank guarantees given by appellant for Rs. 6,20,28,059.98 on 5.5.1997. The appellant has not so far deposited the interest amount as ordered by the High Court.

Since Writ Petition No. 1938 of 1982 was for the purpose of recovery of amounts granted to the appellant in Writ Petition No.907 of 1975, the fate of that writ petition determined the outcome of Writ Petition No. 1938 of 1982. By the order of remand of this Court dated 19.7.1995 the entire claim of the appellant for refund has not been remanded for reconsideration. The remand is for considering only two claims, namely, for freight and bank charges on bill discounting in the light of the judgment of this Court which came to be delivered only in May 1995 in the case of Government of India vs. M.R.F. Limited (Supra). However, on 11.7.1996 the Assistant Commissioner, examining the claims on remand, rejected all claims of the appellant for refund on the ground of the addition of Section 11B (1) and 11B (2) in the Central Excises and Salt Act of 1944 by an amendment in 1991. An appeal from this order of the Assistant Commissioner is pending.

In the context of the amendment made in the Central Excise and Salt Act of 1944, by virtue of the introduction of Section 11B, the order for the return of Rs, 6,20,28,059.98 cannot be questioned, although we should not be taken to have made any pronouncement on the question of

applicability of Section 11B to the appellant's claims in the present case. The applicability of Section 11-B to the appellant's claim is the subject matter of the pending departmental appeal and will be decided in accordance with law and in the light of the decision of this Court in the case of Mafatlal Industries Ltd. vs. Union of India (1997 (89) E.L.T. page 247 [S.C.]).

The appellant has, however, objected to the order directing it to pay interest on this amount at the rate of 12% per annum from 1.11.1982. On this date the appellant contends that it was entitled, prima facie, to the amount, as Section 11B had not been introduced in the Central Excises and Salt Act of 1944. The section came to be introduced by an amendment made in 1991 by the Central Excises and Customs Law (Amendment) Act, 1991, which came into force on 19.9.1991.

On merit a part of the claim of the appellant for refund under the head of post-manufacturing expenses became untenable in some aspects on account of a judgment delivered by this Court in May, 1995 in the case of Government of India vs. M.R.F. Limited (Supra). It was in the light of the above judgment that this Court in the writ petition claiming refund, directed a remand by its order of 19th of July, 1995.

Section 11AA of the Central Excise and Salt Act, 1944 was added on 26th of May, 1995 by the Finance Act, 1995. This section provides, inter alia, for interest on delayed payment of duty. Where a person chargeable with duty determined under sub-section (2) of Section 11A fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest at such rate not below 10% and not exceeding 30% per annum as is for the time being fixed by the board on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty. Prior to the insertion of Section 11AA there was no specific provision in the Central Excises and Salt Act, 1944 under which the department could recover interest on delayed payment of duty. But this Court had, in suitable cases, directed payment of interest. Two such decision have been brought to our notice. In the case of Kashyap Zip Ind vs. Union of India & Ors. (1993 Supp. (3) SCC 493), the recovery of disputed duty had been stayed by an interim order of the High Court in the writ petition. While dismissing the writ petition and revoking the Stay order, the High Court directed the appellant to pay interest at 17.5% per annum from the date of the order of Stay till recovery. This Court reduced the rate of interest to 12% per annum and on the facts and circumstances directed that this amount should be recovered from 1st of January, 1985 till payment, this being the year in which the matter was finally decided by this Court as a result of which the writ petition came to be dismissed by the High Court.

In the case of Star Paper Mills Ltd. vs. Union of India (1996 (83) E.L.T. page 18 [S.C.]), dealing with the payment of interest on demand which had been stayed, the High Court had ordered payment of compound interest at 17.5% from the date of the Stay order dated 22.5.1981. This Court reduced the rate of interest to 12% per annum simple interest and ordered its payment only from 1.1.1984.

In the present case, the appellant's submission that he should not be asked to pay interest on the entire amount of Rs. 6,20,28,059.98 has not impressed us, looking to the intervening changes in the law as a result of the insertion of Section 11B and the decision of this Court in the case of

Mafatlal Industries Ltd. vs. Union of India (Supra) and the facts and circumstances of the case. The order directing the appellant to pay interest, however, is modified as follows in the facts and circumstances of the present case set out above. We, therefore, direct the appellant to pay interest at the rate of 12% per annum on the said amount of Rs. 6,20,28,059.98 from 1.10.1991 of 1.5.1997, the latter date being the date when the entire principal amount was recovered by the respondents.

The appeal is, therefore, dismissed with the above modification in the High Court's order.

JUDIS