

1995 (2) G. L. H. 997
A. P. RAVANI AND J. N. BHATT, JJ.

(M/s) Ramkrishna Wire Works, a registered partnership firm and Anr. ...Petitioners
Versus
Union of India and Ors. ...Respondents

Special Civil Application No. 1126 of 1990* with Special Civil Application Nos. 1127 & 1128/1990

D/- 2-12-1994

*Special Civil Applications claiming interest on Excise duty ordered to be refunded

Central Excise & Salt Act, 1944 -Interest on amount of refund of duty -No provision in the Act - Unless the department lacked in good faith and acted with mala fides in recovering the amount of duty - Satellite Engineering v. Asstt. Collector of Central Excise, 1992 (58) ELT 503 relied upon.

It may be noted that there is no statutory provision on the basis of which the petitioners could have claimed interest on the amount of refund of duty granted to them. Had the legislature thought it fit to award interest in cases where the amount of duty is refunded, the legislature would have made such provision. It is pertinent to note that such provisions are made in other taxing statutes such as Gujarat Sales Tax Act, 1969 and Income Tax Act, 1961. There is no such provision in the Central Excise and Salt Act, 1944. Therefore there is no basis in law on which the claim for interest could be founded. (Para 3)

In this connection the Division Bench of this Court, while deciding the case of Satellite Engineering (supra), referred to a decision of the Bombay High Court in the case of *Municipal Borough, Ahmedabad v. Vadilal*, reported in AIR (31) 1944 Bombay pg. 233. The Division Bench *inter alia* observed as follows:

"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 to tax illegally recovered. The Lower Court had allowed the claim of interest made by the tax payer. Beamont 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 S. 206 of Bombay Municipal Boroughs Act, 1925 which protected the Municipality and its officers for action taken in good faith. We are in respectful agreement with this decision of the Bombay High Court. Similar is the provision in S. 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 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. (Para 4)

Cases Referred :

1. Satellite Engineering v. Asstt. Collector of Central Excise, 1992 (58) ELT 503 (Paras 2, 4, 5)
2. M/s. Vijay Textiles v. Union of India, 20 GLR 944 (Para 2)
3. M/s. Ujagar Prints v. Union of India, AIR 1989 SC 516 (Para 2)
4. Municipal Borough, Ahmedabad v. Vadilal, AIR 1944 Bom. 233 (Para 4)

Appearances:

Mr. Mihir Joshi for Mr. K. S. Nanavati for the petitioners

Mr. H. M. Mehta, Sr. Central Govt. Standing Counsel with Mr. J. D. Ajmera, Addl. Central Govt. Standing Counsel for the respondents

PER A. P. RAVANI, J.:-

1.

In all these three petitions the petitioners claim amount of interest on the amount which has been ordered to be refunded to each one of them by judgment and order passed in respective petitions filed by them in this High Court. Petitioner of Special Civil Application No. 1126 of 1990 had filed Special Civil application No. 791 of 1972. Petitioner of Special Civil Application No. 1127 of 1990 had filed Special Civil Application No. 1215 of 1972, and petitioner of Special Civil Application No. 1128 of 1990 had filed Special Civil Application No. 793 of 1972. In the aforesaid petitions the respondents were directed to refund the amount of excise duty which was recovered from them unlawfully as held by the High Court. It may be noted that the High Court, while granting refund, did not issue any direction as regards payment of interest in the respective petitions. None of the petitioners did even pray for grant of interest. Thus technically all the petitions are barred by the principles of constructive *res judicata*. However, we are deciding the petition on merits also.

2. Now the petitioners claim that they should be paid interest on the amount of excise duty which was unlawfully recovered and retained by the Government. Amount of interest as prayed for cannot be granted to the petitioners in view of the decision of Division Bench of this Court in the case of *Satellite Engineering v. Asstt. Collector of Central Excise*, reported in 1992 (58) ELT 503. In the aforesaid decision this Court has considered the earlier Division Bench judgment of this Court in the case of *M/s Vijay Textile v. Union of India*, reported in 20 GLR pg. 944, wherein interest was awarded. However, the said decision has been reversed by the Supreme Court in the case of *M/s Ujagar Prints v. Union of India*, reported in AIR 1989 SC pg. 516. This Court further observed that the Supreme Court might not have touched the question with regard to the claim of interest, which was awarded in the case of *Vijay Textile (supra)*, but the decision of the Division Bench of this Court ceases to be good law. This is so, because the decision in the case of *Vijay Textile (supra)* itself has been reversed and set aside. Once a decision is reversed and set aside, it is immaterial on which point the decision was reversed. On the reversion of the decision it ceases to be good decision in the eye of law.

3. It may be noted that there is no statutory provision on the basis of which the petitioners could have claimed interest on the amount of refund of duty granted to them. Had the legislature thought it fit to award interest in cases [/@page998] where the amount of duty is refunded, the legislature would have made such provision. It is pertinent to note that such provisions are made in other taxing statutes such as Gujarat Sales Tax Act, 1969 and Income Tax Act, 1961. There is no such provision in the Central Excise and Salt Act, 1944. Therefore there is no basis in law on which the claim for interest could be founded.

4. In this connection the Division Bench of this Court, while deciding the case of *Satellite Engineering (supra)*, referred to a decision of the Bombay High Court in the case of *Municipal Borough, Ahmedabad v. Vadilal*, reported in AIR (31) 1944 Bombay pg. 233. The Division Bench *inter alia* observed as follows:

"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. *Beamont 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 action 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."

This is the settled legal position.

5. Nothing is pointed out to us to take a different view from the view taken by the Division Bench of this Court in the case of Satellite Engineering Ltd. (supra). There is no substance in the petition. Hence rejected. Rule discharged, with no order as to costs.

(VSM) Rule discharged.