

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.01.2012

+ **W.P.(C) 14414-15/2006**

KWALITY ICE CREAM COMPANY AND ANR ... Petitioners

versus

UNION OF INDIA AND ORS ... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr R. Narain with Ms Mallika Joshi,
Ms Amrita Chatterjee and Mr Rajan Narain
For the Respondents : Mr Satish Kumar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

BADAR DURREZ AHMED, J (ORAL)

1. By way of this writ petition, the petitioners seek the quashing of the default notices of demand dated 04.08.2006 and 03.07.2006 and the demand letters dated 07.03.2006, 09.12.2005 and 19.10.2005. By virtue of the said letters, the respondents have demanded a sum of ₹ 24,05,332/- by way of interest on the demand of central excise duty of ₹ 75,16,661/-. We may point out that by virtue of an order-in-original dated 06.04.2000, a sum of ₹ 1,23,00,006/- was demanded by way of duty short paid. When the petitioner went in appeal before the Commissioner (Appeals), the said amount of duty was reduced to

₹ 75,16,661/- by his order dated 12.09.2001. It is relevant to mentioned that neither in the order-in-original nor in the appellate order was there any direction for payment of interest.

2. It is also the case of the petitioner that as the petitioner desired to close the matter, it had agreed to pay the amount of ₹ 75,16,661/- and it was under an understanding that the matter would be treated as closed and no further proceedings would take place in respect of the same. It is on this basis that the petitioner did not prefer any appeal before the Central Excise and Gold (Control) Appellate Tribunal. Thereafter, no action was taken by the respondents. However, after a lapse of about three years, the petitioner received a letter dated 10.11.2004, in which a demand of ₹ 24,05,332/-, which was described as differential duty, was raised. But, as the petitioner had explained that the entire amount of differential duty amounting to ₹ 75,16,661/- had been paid, it appears that the respondents did not pursue the demand towards differential duty any further. However, the department issued another letter dated 19.10.2005, wherein it demanded the said sum of ₹ 24,05,332/-, this time, towards the payment of interest on the differential duty of ₹ 75,16,661/-, purportedly under the provisions of Section 11AA of the Central Excise Act, 1944.

3. The short point that arises for consideration in this writ petition is whether the demand for payment of interest would be barred on account of delay and laches. The learned counsel for the petitioner submitted that the amount determined by the Assistant Commissioner in the order-in-original was ultimately reduced by the Commissioner (Appeals) to ₹ 75,16,661/- by virtue of the order dated 12.09.2001. The said amount was paid shortly thereafter on 23.10.2001 and thereafter a letter dated 24.10.2001 was sent to the Commissioner of Central Excise enclosing the challan dated 23.10.2001. The matter rested there and it is only after a lapse of over three years that the first letter, raising the demand of ₹ 24,05,332/-, was received by the petitioner which was also purportedly towards differential duty. However, as the petitioner had explained that the entire duty amount had been paid, the department issued the said letter dated 19.10.2005, demanding interest of ₹ 24,05,332/-. The learned counsel for the petitioner submitted that the demand for interest, even if the starting point is taken as the date of the order passed by the Commissioner (Appeals), that is, 12.09.2001, is highly belated inasmuch as the first demand for interest was made on 19.10.2005.

4. The learned counsel for the petitioner drew our attention to a decision of the Tribunal reported in *1996 (86) DLT 144* entitled *Collector of Customs, Madras v. TVS Whirlpool Limited*, in which it was held that the lower authority was right in holding that the demand beyond the period of six months from the

clearance of goods, was barred by limitation. This conclusion was arrived at based on the logic that the period of limitation for demanding interest ought to be the same as the period of limitation for demand of duty. This matter was carried in appeal to the Supreme Court. The matter was numbered as Civil Appeal No. 7299-7309/1997. The Supreme Court by an order dated 07.10.1999 held as under:-

“It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon. We find no merit in the appeals and they are dismissed with costs.”

5. It is, therefore, clear that the principle adopted by the Supreme Court was that the period of limitation, unless otherwise stipulated by the statute, which applies to a claim for the principal amount should also apply to the claim for interest thereon. If that be the position, the period of limitation prescribed for demand of duty under Section 11A is normally one year and, in exceptional circumstance of a case falling under the proviso to Section 11A(1), the period of limitation is five years. But that would be applicable only in case of misstatement, fraud, concealment etc., which is not the case here. As such, in the present case, the period of limitation for the demand for duty would be one year. By the same logic, the period of limitation for demand of interest thereon would be one year. Inasmuch as the demand for interest has been made beyond a period of one year, the demand would be clearly hit by the principle of limitation as laid

down by the Supreme Court. Even if, we take the letter dated 25.10.2004 as the first demand of interest, although that letter was in respect of a demand for differential duty, the demand would still be beyond a period of three years.

6. In view of the fact that we have taken a decision, as indicated above, we are not examining the other point raised by the learned counsel for the petitioner that the duty itself was not payable in view of the decisions of the Supreme Court in respect of its sister concerns in relation to common agreements. However, the learned counsel for the respondents in that regard has submitted that the Commissioner's order dated 12.09.2001 had become final and, therefore, that aspect of the matter ought not to be looked into. In any event, as we have indicated above, since we have decided this writ petition only on the question of limitation, we have not gone into the second aspect of the matter.

7. The impugned demands and letters demanding a sum of ₹ 24,05,332/- towards interest on central excise duty stand quashed. The writ petition stands allowed. There shall be no order as to costs.

BADAR DURREZ AHMED,J

V.K. JAIN, J

JANUARY 18, 2012
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