REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2995-2996 OF 2022
(Arising out of Special Leave to Appeal (C) Nos. 7312-7313 of 2022)
@ Special Leave Petition (C) Diary No.27099 of 2020

UNION OF INDIA & ORS. **…Appellants**

versus

M/S. WILLOWOOD CHEMICALS PVT. LTD. & ANR. **…Respondents**

AND

CIVIL APPEAL NOS. 2997-2998 OF 2022
(Arising out of Special Leave to Appeal (C) Nos. 7314-7315 of 2022)
@ Special Leave Petition (C) Diary No.28455 of 2020

UNION OF INDIA & ORS. **…Appellants**

versus

M/S. SARAF NATURAL STONE & ANR. **…Respondents**

J U D G M E N T

Uday Umesh Lalit, J.

1. Delay condoned. Leave granted.

2. Appeal arising out of Special Leave Petition (C) Diary No.27099 of 2020 is directed against the judgment and order dated 10.07.2019 passed by the High

Court[1] in Special Civil Application No.18591 of 2018 and against the order dated 13.03.2020 passed in Review Petition arising therefrom being Misc. Civil Application No.1 of 2019. (For facility, hereinafter referred to as, "the first case")

Appeal arising out of Special Leave Petition (C) Diary No.28455 of 2020 is directed against the judgment and order dated 10.07.2019 passed by the High Court[1] in Special Civil Application No.15925 of 2018 and against the order dated 13.03.2020 passed in Review Petition arising therefrom being Misc. Civil Application No.1 of 2019. (For facility, hereinafter referred to as, "the second case")

3. The second case arises out of a Writ Petition, being Special Civil Application No.15925 of 2018 filed by M/s. Saraf Natural Stone submitting *inter alia* that:

> "2.5 The Petitioner states that in terms of Section 16 of the IGST Act[2], 2017, a registered person making exports of goods outside India, shall be eligible to claim, refund of either unutilized input tax credit on export of goods under bond or letter of undertaking or refund of Integrated tax paid on export of goods.
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> 2.6 The Petitioner further states that Section 16(3) of the IGST Act, provides that refund should be claimed in accordance with the provisions of Section 54 of the CGST Act[3] or the rules made thereunder. Section 20 of the IGST Act further provides that provisions of CGST Act relating to refunds

1 High Court of Gujarat at Ahmedabad.
2 The Integrated Goods and Services Tax Act, 2017
3 The Central Goods and Services Tax Act, 2017

shall, mutatis mutandis, apply, so far as may be, in relation to Integrated tax as they apply in relation to central tax as if they are enacted under this Act.

2.7. The Petitioners further states that Rule 2 of the Integrated Goods and Services Tax Rules, 2017 provides that the Central Goods and Services Tax Rules, 2017, for carrying out the provisions specified in Section 20 of the Integrated Goods and Services Tax Act, 2017 shall, so far as may be, apply in relation to Integrated tax as they apply in relation to Central tax.

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2.15 The petitioner further states that the Central Government vide Notification No.13/2017- Central Tax, dated 28.06.2017 and Notification No.6/2017 – integrated tax dated 28.06.2017 has fixed the rate of interest from the 1st day of July, 2017 at 6% p.a. and 9% p.a. for the purposes of Section 56 and proviso to Section 56 of CGST Act, 2017 respectively. Copies of the aforesaid notifications are enclosed herewith marked at Annexure & and Annexure B respectively.

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2.19 The petitioner states further that it received the refund of integrated tax paid on export of goods after substantial period of delay. Details of refund claimed, date of application of refund and actual date of grant of refund for the month of July is enclosed herewith and marked as Annexure-D"

3.1 Details of 15 (Fifteen) refunds made to said writ petitioner showed that there was delay ranging from 94 to 290 days.

3.2 In the circumstances it was prayed *inter alia*:-

"a) to issue writ of mandamus and/ or any other appropriate writ(s) for directions is the Respondents for providing appropriate compensation as well as interest, for delay in the granting of refund;"

4. The first case arises out of Special Civil Application No.18591 of 2018 filed by M/s. Willowood Chemicals Pvt. Ltd. submitting that said Writ Petitioner was entitled on the basis of Section 16 of the IGST Act read with Section 54 of the CGST Act for compensation in receipt of delayed payment as detailed in Annexure D of the petition, which in turn dealt with 12 refunds with delay ranging between 94 to 290 days. The special civil application had thus prayed for appropriate compensation.

5. In both the petitions it was submitted that inaction leading to inordinate delay in granting refunds was per se arbitrary and that the inordinate delay impacted the working capacity of the Writ Petitioners thereby reducing their ability to conduct business and as such appropriate compensation ought to be awarded along with interest for delay.

The submissions were opposed by the learned counsel appearing for the Revenue.

6. The High Court considered the rival submissions in light of the statutory provisions and relied upon certain decisions including the decision of this Court in ***K.T. Plantation Pvt. Ltd. and Anr. v. State of Karnataka***[4] , ***Sandvik Asia Ltd.*** v. ***Commissioner of Income Tax-I Pune and others***[5] and ***Commissioner of***

4 (2011) 9 SCC 1
5 (2006) 2 SCC 508

Income Tax, Gujarat v. ***Gujarat Fluoro Chemicals***[6]. In its judgment dated 10.7.2019 which is under challenge in the second case, the High Court concluded:

> "22. The position of law appears to be well settled. The provisions relating to an interest of delated payment of refund have been consistently held as beneficial and non-discriminatory. It is true that in the taxing statute the principles of equity may have little role to play, but at the same time, any statute in taxation matter should also meet with the test of constitutional provision.
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> 23. The respondents have not explained in any manner the issue of delay as raised by the writ applicants by filing any reply.
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> 24. The chart indicating the delay referred to above speaks for itself.
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> 25. In the overall view of the matter, we are inclined to hold the respondents liable to pay simple interest on the delayed payment at the rate of 9% per annum. The authority concerned shall nook into the chart provided by the writ-applicants, which is at Page-30, Annexure-D to the writ application and calculate the aggregate amount of refund. On the aggregate amount of refund, the writ-applicants are entitled to 9% per annum interest from the date of filing of the GSTR-03. The respondents shall undertake this exercise at the earliest and calculate the requisite amount toward the interest. Let this exercise be undertaken and completed within a period of two months from the date of receipt of the writ of this order. The requisite amount towards the interest shall be paid to the writ-applicants within a period of two months form the date of receipt of the writ of this order."

7. The first case was then disposed of on the same day with the following observations:-

> "4. For the reasons assigned in the Special Civil Application No15925 of 2018, decided on 10/07/2019, this writ application is allowed to the extent that the writ applicants are entitled to the interest for the delayed payment at the rate of 9% per annum.

6 (2014) 1 SCC 126

> The authority concerned shall look into the chart provided by the writ applicants, which is at Page 30, Annexure D to the writ application and calculate the aggregate refund, the writ applicants are entitled to 9% per annum interest from the date of filing of the GSTR38. The respondents shall undertake this exercise at the earliest and calculate the requisite amount towards interest. Let this exercise be undertaken and completed within a period of two months from the date of receipt of the writ of this order. The requisite amount towards the interest shall be paid to the writ applicants within a period of two months from the date of receipt of the writ of this order."

8. The appellant being aggrieved, preferred Review Petitions in both the cases. It was submitted *inter alia*:

> "4. It is respectfully submitted that this Hon'ble Court has directed the respondent authority to pay simple interest on the delayed payment at the rate of 9% per annum from the date of filing of the GSTR-3B.
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> 5. It is respectfully submitted that as per section 56 of the IGST Net Interest at the rate of not exceeding six percent may be given whereas by order dated 10.07.2011 this Hon'ble court was pleased to give interest at the rate of 9%."

By separate orders dated 13.3.2020 passed in both the cases, the Review Petitions preferred by the appellant were dismissed.

9. The aforestated judgments and orders passed by the High Court are under challenge in these appeals. The appellants do not dispute the eligibility of the respondents for receiving interest for delayed payment of claims but their submission is that in terms of the relevant statutory provision, the interest could be awarded at the rate of 6 per cent and not 9 per cent per annum. Considering the stand taken by the appellants, at the interim stage, this Court directed the

appellants to make good payment of interest at the rate of 6 per cent. Accordingly, the amounts representing interest at that rate have since then been made over.

10. We have heard Mr. N. Venkataraman, learned Additional Solicitor General on behalf of the appellants in both the matters while Mr. Vinay Shraff, learned Advocate appeared for the respondents in both the cases.

11. Before we deal with the controversy in question, we may extract the relevant statutory provisions: -

A) Sections 16 and 20 of the IGST Act are as follows:-

> "**16.** Zero rated supply - (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—
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> (a) export of goods or services or both; or
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> (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
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> (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
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> (3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—
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> (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or
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> (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on

payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

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20. Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

(i) scope of supply;

(ii) composite supply and mixed supply;

(iii) time and value of supply;

(iv) input tax credit;

(v) registration;

(vi) tax invoice, credit and debit notes;

(vii) accounts and records;

(viii) returns, other than late fee;

(ix) payment of tax;

(x) tax deduction at source;

(xi) collection of tax at source;

(xii) assessment;

(xiii) refunds;

(xiv) audit;

(xv) inspection, search, seizure and arrest;

(xvi) demands and recovery;

(xvii) liability to pay in certain cases;

(xviii) advance ruling;

(xix) appeals and revision;

(xx) presumption as to documents;

(xxi) offences and penalties;

(xxii) job work;

(xxiii) electronic commerce;

(xxiv) transitional provisions; and

(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, *mutatis mutandis*, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

Provided also that in cases where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively."

(B) Sections 54 and 56 of the CGST Act are as under:-

"**54.** Refund of tax - (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a

declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilized input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law. *Explanation.*—For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—For the purposes of this section,—

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) "relevant date" means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange 3 "or in Indian rupees wherever permitted by the Reserve Bank of India", where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax. Refund in certain cases.

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56. Interest on delayed refunds - If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5)”

12. These provisions show that a registered person making export of goods outside India, is entitled in terms of Section 16 of the IGST Act to claim refund of either unutilized input tax credit of export of goods under bond or letter of undertaking or refund of integrated tax paid on export of goods. In terms of Section 20 of the IGST Act, any claim for refund is to be governed by the provisions of the CGST Act which would apply *mutatis mutandis* as if they were enacted in the IGST Act. The application for refund, therefore, is required to be preferred in accordance with Section 54 of the CGST Act. According to Section 56 of the CGST Act, if an applicant is not refunded any tax ordered to be refunded by the Proper Officer under Section 54(5) within 60 days from the receipt of the application, interest at such rate not exceeding 6 per cent would become payable after the expiry of 60 days from the date of receipt of application till the date of refund of such tax. The proviso to said Section prescribes that where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court and if the same is not refunded within 60 days from the date of receipt of an application filed consequent to such an order, the rate of interest payable would be 9 per cent.

13. The instant cases have not arisen from any order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court

and the cases are strictly within the scope of the principal provision of Section 56 and not under the proviso thereof. In light of these provisions, the question which arises for consideration is whether the High Court was justified in awarding interest at the rate of 9 per cent per annum.

14. Before we deal with the question, it must be stated that initially a bench of two Judges of this Court in ***Union of India and others v. Orient Enterprises and Another***[7] had observed that a Writ Petition under Article 226 of the Constitution filed solely for relief for payment of interest on delayed refund would not be maintainable. For facility, the relevant portion from the said decision is quoted here:

> **"6.** In *Suganmal* [AIR 1965 SC 1740 : 56 ITR 84 : 16 STC 398] 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:
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> > "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 amounts 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,

7 (1998) 3 SCC 501

> and the courts, on setting aside the assessment orders, exercised 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 provision. 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 the 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* [AIR 1965 SC 1740: 56 ITR 84: 16 STC 398] 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."

15. However, subsequently another bench of two Judges of this Court in ***Godavari Sugar Mills Ltd.***[7] in more or less identical circumstances settled the issue and found the Writ Petition to be maintainable. The observations of this Court were:

> **"7.** The High Court relying upon the decision of this Court in *Suganmal* v. *State of M.P.* [AIR 1965 SC 1740] has held that the prayer in the writ petition being one for payment of interest, it should be considered to be a writ petition filed to enforce a money claim and therefore, not maintainable. The observations in *Suganmal* [AIR 1965 SC 1740] related to a claim for refund of tax and have to be understood with reference to the nature of the claim made therein. The decision in *Suganmal* [AIR 1965 SC 1740] has been explained and distinguished in several subsequent cases, including in *U.P. Pollution Control Board* v. *Kanoria Industrial Ltd.* [(2001) 2 SCC 549] and *ABL International Ltd.* v. *Export Credit GuaranteeCorpn. of India Ltd.* [(2004) 3 SCC 553] The legal position becomes clear when the decision in *Suganmal* [AIR 1965 SC 1740] is read with the other decisions of this Court on the issue, referred to below:
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> (*i*) Normally, a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. *But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers*. (Vide *Burmah Construction Co.* v. *State of Orissa* [AIR 1962 SC 1320 : 1962 Supp (1) SCR 242] .)
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> (*ii*) If a right has been infringed—whether a fundamental right or a statutory right—and the aggrieved party comes to the Court for enforcement of the right, it will not be giving complete relief if the Court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realised by the Government without the authority of law. (Vide *State of M.P.* v. *Bhailal Bhai* [AIR 1964 SC 1006] .)

(*iii*) A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the civil court for claiming the amount, *though the High Courts have the power to pass appropriate orders in the exercise of the power conferred under Article 226 for payment of money*. (Vide *Suganmal* v. *State of M.P.* [AIR 1965 SC 1740])

(*iv*) *There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment, etc.* While a petition praying for mere issue of a writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition. (Vide *Salonah Tea Co. Ltd.* v. *Supdt. of Taxes* [(1988) 1 SCC 401 : 1988 SCC (Tax) 99 (2)]

(*v*) It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without the authority of law and there was no case of undue enrichment, there is no good reason to deny a relief of refund to the citizens. But even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case. (Vide *U.P. Pollution Control Board* v. *Kanoria Industrial Ltd.* [(2001) 2 SCC 549])

(*vi*) Where the lis has a public law character, or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy under Article 226 of the Constitution will not be denied. (Vide *Sanjana M. Wig* v. *Hindustan Petroleum Corporation Ltd. (2005) 8 SCC 242)*

> We are therefore of the view that reliance upon Suganmal was misplaced to hold that the writ petition filed by the appellant was not maintainable."

16. We, therefore, proceed to consider the merits. Turning to the basic question it must be noted that in the following cases, this Court dealt with the question as to payment of interest on the amount due by way of refund:

(A) In ***Modi Industries Ltd. and another*** v. ***Commissioner of Income Tax and Another***[8] a bench of three Judges of this Court was called upon to consider the effect of Section 214 of the Income Tax Act, 1961, and the questions which arose were set out as under:

> "We shall now indicate how the controversy relating to the meaning of the expression "regular assessment" arises: an assessee pays advance tax according to his estimate of his income during the financial year relevant to the particular assessment year. He then files a return and an assessment is made under Section 143. It is found that he has paid more amount by way of advance tax than the amount of tax assessed. He will be refunded the extra amount with interest calculated from the first day of April of that assessment year to the date of assessment. No difficulty arises in such a case. The difficulty arises in the following situation: indeed it is one of the many situations - not satisfied with the order of assessment, the assessee files an appeal. The appeal is allowed as a consequence of which, the assessment order is revised. As a result of such revised assessment made pursuant to the appellate order, the tax refundable to the assessee becomes larger - say whereas, according to the original assessment he was entitled to refund of Rs.10,000/-, he becomes entitled to a total refund of Rs.15,000/- as a result of revised assessment made pursuant to the appellate order. The question is - on what amount and upto which date is the interest payable? On being elaborated, the question yields the following sub-questions:

8 (1995) 6 SCC 396

(a) is the interest payable only on Rs. 10,000/- and if so, whether the interest is payable till the date of first/original assessment or till the date of the revised assessment?

(b) is the interest payable on Rs.15,000/- and if payable, is it payable only till the date of first/original assessment or till the date of the revised assessment?

After considering various decisions on the point, the conclusion drawn by the Court was:

"The argument, which was upheld in some of the cases now under appeal, is that it will be inequitable if the assessee does not get interest on the amount of advance tax paid, when the amount paid in advance is refunded pursuant to an appellate order. This is not a question of equity. There is no right to get interest on refund except as provided by the statute. The interest on excess amount of advance tax under Section 214 is not paid from the date of payment of the tax. Nor is it paid till the date of refund. It is paid only upto the date of the regular assessment. No interest is at all paid on excess amount of tax collected by deduction at source. Before introduction of Section 244(1A) the assessee was not entitled to get any interest from the date of payment of tax upto the date of the order as a result of which excess realisation of tax became refundable. Interest under Section 243 or Section 244 was payable only when the refund was not made within the stipulated period upto the date of refund. But, if the assessment order was reduced in appeal, no interest was payable from the date of payment of tax pursuant to the assessment order to the date of the appellate order.

Therefore, interpretation of Section 214 or any other section of the Act should not be made on the assumption that interest has to be paid whenever an amount which has been retained by the tax authority in exercise of statutory power becomes refundable as a result of any subsequent proceeding.

(Emphasis supplied)

(B) In ***Godavari Sugar Mills Ltd***.[7], a bench of two Judges of this Court considered the question whether interest on the compensation amount at the rate of 9 per cent per annum could be awarded when the terms of Section 6 of the Maharashtra Agriculture Lands (Ceiling of Holdings) Act, 1961 prescribed payment of interest only at the rate of 3 per cent per annum. The discussion on the point was:

> **"9.** There is considerable force in the submissions of Ms Madhavi Divan, the learned counsel for the respondents that the decisions of the Bombay High Court in *Krishnakumar* [WP No. 83 of 1986 decided on 29-6-1991 (Bom)] and *Changdeo* [WP No. 3805 of 2000 decided on 7-7-2000 (Bom)] are not sound, as they completely ignore Section 26 of the Act, while awarding interest at 9% per annum on the belated payment of compensation.
>
> **10.** The question as to when and in what circumstances, interest could be awarded on belated payment of compensation, was considered by this Court in *Union of India* v. *Parmal Singh* [(2009) 1 SCC 618] . This Court first referred to the general principle and then the exceptions thereto, as under: (SCC pp. 624-25, paras 12-13)
>
> "*12*. When a property is acquired, and law provides for payment of compensation to be determined in the manner specified, ordinarily compensation shall have to be paid at the time of taking possession in pursuance of acquisition. By applying equitable principles, the courts have always awarded interest on the delayed payment of compensation in regard to acquisition of any property. …
>
> *13*. … The said general principle will not apply in two circumstances. <u>One is where a statute specifies or regulates the interest. In that event, interest will be payable in terms of the provisions of the statute. The second is where a statute or contract dealing with the acquisition specifically bars or prohibits payment of interest on the compensation amount. In that event, interest will not be awarded. Where the statute is silent about interest, and there is no express bar about payment of interest, any delay in paying the compensation or enhanced</u>

compensation for acquisition would require award of interest at a reasonable rate on equitable grounds."

This Court, dealing with an acquisition under the Defence of India Act, 1962 (which did not contain any provision either requiring or prohibiting payment of interest), upheld the award of interest at 6% per annum.

11. Section 24 of the Act requires the Collector, after possession of surplus land was taken over under Section 21(4) of the Act, to cause public notice requiring persons interested to lodge their claims. Section 25 of the Act provides for determination of compensation and apportionment thereof. Section 26 deals with mode of payment of amount of compensation and the same is extracted below:

"26. *Mode of payment of amount of compensation*.—(1) The amount of compensation may, subject to the provisions of sub-section (3), be payable in *transferable bonds carrying interest at three per cent per annum*.

(2) The bonds shall be—

(*a*) of the following denominations, namely— Rs. 50; Rs. 100; Rs. 200; Rs. 500; Rs. 1000; Rs. 5000 and Rs. 10,000; and

(*b*) of two classes—one being repayable during a *period of twenty years*from the date of issue by equated annual instalment of principal and interest, and the other being redeemable at par at the end of a period of *twenty years* from the date of issue. It shall be at the option of the person receiving compensation to choose payment in one or other class of bonds, or partly in one class and partly in another.

(3) Where the amount of compensation or any part thereof, cannot be paid in the aforesaid denomination, *it may be paid in cash*."

(emphasis supplied)

The said section contemplates the payment of compensation with interest at 3% per annum in annual instalments spread over a period of 20 years or at the end of 20 years. It also contemplates payment being made either by transferable bonds or in cash. Sub-section (3) of Section 26 enabling payment of compensation by cash, in cases where it could not be paid by such bonds, does not disturb the rate of interest, which is 3% per annum for 20 years, provided in sub-section (1) thereof. We are therefore of the view that whether the payment is made by

> transferable bonds or by cash, the rate of interest can be only at 3% per annum for a period of 20 years from the date of taking possession.
>
> **12.** The next question that requires consideration is about the rate of interest if the payment is not made even after 20 years, and whether it should be only at the rate of 3% per annum, even after 20 years. Section 26 is silent about the rate of interest payable, if the compensation is not paid within 20 years. We are therefore of the view that Section 26 contemplates payment of the compensation within 20 years from the date of taking possession with interest at 3% per annum; and for the period beyond 20 years, the said provision regarding interest will cease to apply and the general equitable principles relating to interest will apply; and interest can be awarded at any reasonable rate, in the discretion of the court. Interest at the rate of 6% per annum, beyond 20 years would be appropriate and payable on equitable principles."

(C) In ***Sandvik Asia Ltd.***[5], a bench of two Judges of this Court was called upon to consider whether the inordinate delay of about 12 to 17 years in making a refund would entitle grant of interest. In the facts of that case, interest at the rate of 9 per cent per annum from 31.03.1986 to 27.03.1998 was granted. Even while doing so this Court observed:

> "**48.** There cannot be any doubt that the award of interest on the refunded amount is as per the statutory provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation."

(D) In ***Gujarat Fluoro Chemicals***[6], the correctness of the decision in ***Sandvik Asia Ltd.***[5] came up for consideration before a bench of three Judges of this Court, and the matter was considered thus:

"3. In order to answer the aforesaid issue before us, we have carefully gone through the judgment of this Court in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508] and the order of reference. We have also considered the submissions made by the parties to the lis.

4. We would first throw light on the reasoning and the decision of this Court on the core issue in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508]. The only issue formulated by this Court for its consideration and decision was whether an assessee is entitled to be compensated by the Income Tax Department for the delay in paying interest on the refunded amount admittedly due to the assessee. This Court in the facts of the said case had noticed that there was delay of various periods, ranging from 12 to 17 years, in such payment by the Revenue. This Court had further referred to the several decisions which were brought to its notice and also referred to the relevant provisions of the Act which provide for refunds to be made by the Revenue when a superior forum directs refund of certain amounts to an assessee while disposing of an appeal, revision, etc. Since there was an inordinate delay on the part of the Revenue in refunding the amount due to the assessee this Court had thought it fit that the assessee should be properly and adequately compensated and therefore in para 51 of the judgment, the Court while compensating the assessee had directed the Revenue to pay a compensation by way of interest for two periods, namely, for Assessment Years 1977-1978, 1978-1979, 1981-1982, 1982-1983 in a sum of Rs 40,84,906 and interest @ 9% from 31-3-1986 to 27-3-1998 and in default, to pay the penal interest @ 15% per annum for the aforesaid period.

5. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assessees and also by the Revenue. They are of the view that in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508] this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

6. As we have already noticed, in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508] this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice

> caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest."

17. Since reliance was placed by the High Court on the decision of the Constitution Bench of this Court in ***K.T. Plantation Pvt. Ltd. and Anr.***[4], we must note that what arose for consideration in that case, was the constitutional validity of the Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996, and Section 110 of the Karnataka Lands Reforms Act, 1996 and certain notifications issued by the State Government. The questions which arose for consideration were set out in paragraph 25 of the decision as under:-

> "Whether the relevant provisions violated the basic structure of the Constitution in so far as they conferred power on the executive government for withdrawal of exception without hearing and without reasons and whether the provisions of the Acquisition Act were protected by Article 31(A) of the Constitution and whether they were violative of Article 300(A) of the Constitution?"

After dealing with these questions, the reference was answered thus:

> We, therefore, answer the reference as follows:
>
> (*a*) Section 110 of the Land Reforms Act and the Notification dated 8-3-1994 are valid, and there is no excessive delegation of legislative power on the State Government.
>
> (*b*) Non-laying of the Notification dated 8-3-1994 under Section 140 of the Land Reforms Act before the State Legislature is a curable defect and it will not affect the validity of the notification or action taken thereunder.

> (*c*) The Acquisition Act is protected by Article 31-A of the Constitution after having obtained the assent of the President and hence immune from challenge under Article 14 or 19 of the Constitution.
>
> (*d*) There is no repugnancy between the provisions of the Land Acquisition Act, 1894 and the Rocrich and Devika Rani Rocrich Estate (Acquisition & Transfer) Act, 1996 (in short "the Acquisition Act"), and hence no assent of the President is warranted under Article 254(2) of the Constitution.
>
> (*e*) Public purpose is a precondition for deprivation of a person from his property under Article 300-A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.
>
> (*f*) Statute, depriving a person of his property is, therefore, amenable to judicial review on grounds hereinbefore discussed."

The aforestated answers and especially one at serial (e) show the context in which the issue of compensation was considered by this Court, which is completely distinct and different from the issue with which we are presently concerned.

18. Coming back to the present cases, the relevant provision has prescribed rate of interest at 6 per cent where the case for refund is governed by the principal provision of Section 56 of the CGST Act. As has been clarified by this Court in ***Modi Industries Ltd.***[9] and ***Godavari Sugar Mills Ltd***.[7] wherever a statute specifies or regulates the interest, the interest will be payable in terms of the provisions of the statute. Wherever a statute, on the other hand, is silent

about the rate of interest and there is no express bar for payment of interest, any delay in paying the compensation or the amounts due, would attract award of interest at a reasonable rate on equitable grounds. It is precisely for this reason that paragraph 9 of the decision in ***Godavari Sugar Mills Ltd.***[7] accepted the submission made by the learned counsel for the respondents and confined the rate of interest to the prescription made in the statute. The award of interest at a rate in excess of what was prescribed by the statute was only for a period beyond 20 years where the matter was not strictly covered by the statute and as such it would be in the realm of discretion of the Court. It must also be noted here that the inordinate delay of up to 17 years in making refunds was a special circumstance when this Court was persuaded to accept grant of interest at the rate of 9 per cent per annum in ***Sandvik Asia Ltd.***[5] Even while doing so, the observations made by this Court in Paragraph 48 of the decision are quite clear that "the award of interest in refund and amount must be as per the statutory provisions of law and whenever a specific provision has been made under the statute such provision has to govern the field." The subsequent decision of the bench of three Judges in ***Gujarat Fluoro Chemicals***[6] noticed that the grant of interest at the rate of 9 per cent was in the facts of the case in ***Sandvik Asia Ltd.***[5]

19. Since the delay in the instant case was in the region of 94 to 290 days and not so inordinate as was the case in ***Sandvik Asia Ltd***.[5], the matter has to be seen

purely in the light of the concerned statutory provisions. In terms of the principal part of Section 56 of the CGST Act, the interest would be awarded at the rate of 6 per cent. The award of interest at 9 per cent would be attracted only if the matter was covered by the proviso to the said Section 56. The High Court was in error in awarding interest at the rate exceeding 6 per cent in the instant matters.

20. We, therefore, allow these appeals and direct that the original writ petitioners would be entitled to interest at the rate of 6 per cent per annum on amounts that they were entitled by way of refund of tax. Since the concerned amounts along with interest at the rate of 6 per cent per annum have already been made over to them, nothing further need be done in both the cases.

21. The instant Civil Appeals are thus allowed to the extent indicated above without any order as to costs.

……..J.
[Uday Umesh Lalit]

……..J.
[S. Ravindra Bhat]

New Delhi;
April 19, 2022.