

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 24TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION No.16917 OF 2022 (T-RES)

BETWEEN:

LM WIND POWER BLADES (INDIA) PVT LTD
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT PLOT NO.85,
KIADB INDUSTRIAL AREA, PHASE II
THIMMANAYAKAHANAHALLI, SOMAPURA HOBLI
DOBESPET, BANGALORE-562111
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR SHOVI GUPTA
TAX MANAGER

...PETITIONER

(BY SRI. TUSHAR JARWAL., ADVOCATE FOR
SRI. RAGHURAM CADAMBI., ADVOCATE)

AND:

- 1 . UNION OF INDIA
THROUGH THE REVENUE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE, 128-A NORTH BLOCK
NEW DELHI-110001, DELHI
- 2 . COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX
NORTH WEST, 2ND FLOOR
BMTc BUS STAND COMPLEX
SHIVAJINAGAR
BANGALORE-560 051.
- 3 . ASSISTANT COMMISSIONER OF CENTRAL TAX
DIVISION 3, NORTH WEST COMMISSIONERATE
2ND FLOOR, SOUTH WING,
SHIVAJINAGAR
BMTc BUS STAND COMPLEX
BANGALORE-560 051.

4 . DEPUTY COMMISSIONER OF CENTRAL TAX
DIVISION 3, NORTH WEST COMMISSIONERATE,
2ND FLOOR. SOUTH WING, SHIVAJINAGAR
BMTc BUS STAND COMPLEX
BANGALORE-560 051.

...RESPONDENTS

(BY SRI. AKASH.B. SHETTY., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR ALL PAPERS AND PROCEEDINGS OF THE PETITIONERS CASE PERTAINING TO THE ORDER DTD.28.7.2022 ANNEXURE-A AND AFTER EXAMINING THE VALIDITY LEGALITY AND PROPRIETY THEREOF, QUASH AND SET ASIDE THE ORDER DTD.28.7.2022 ISSUED BY ASSISTANT COMMISSION OF CENTRAL TAX NORTH WEST DIVISION -3 REFUND APPLICATION REFERENCE NO.(ARN) AA290522075529T R-3 AND ETC DIRECT THE ASSISTANT COMMISSIONER OF CENTRAL TAX NORTH WEST DIVISION -3 R-3 TO GRANT INTEREST TO THE PETITIONERS FROM THE DATE OF ENCASHMENT OF BANK GUARANTEES i.e 29.3.2019 TIL GRANT OF REFUND ON 05.01.2022 IN TERMS OF DIRECTION OF HONBLE BOMBAY HIGH COURT DTD.15.9.2020 PASSED IN W.P.NO.6968/2019.

THIS W.P. COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In this petition, petitioner seeks quashing of the impugned order at Annexure-A dated 28.07.2022 passed by 3rd respondent rejecting the claim of the petitioner of payment of interest from the date of encashment of bank guarantees i.e., 29.03.2019 till grant of refund on 05.01.2022 in terms of the order passed by the Bombay High Court in W.P.No.6968/2019 and for other reliefs.

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner submits that during the period from 17.10.2018 to 26.10.2018, petitioner furnished 8 Bank Guarantees in a sum of Rs.4,73,26,512/- by way of security for release of goods and subsequently, aggrieved by the orders passed by the GST authorities, petitioner filed statutory appeals and deposited various amounts with the respondents along with pre-deposit also. On 29.03.2018, the GST authorities illegally encashed the aforesaid bank guarantees of the petitioner. Aggrieved by the same, petitioner preferred W.P.No.6968/2019 before the Bombay High Court which was allowed vide final order dated 15.09.2020 directing the GST authorities to refund the aforesaid sum of Rs.4,73,26,512/- covered by the 8 encashed bank guarantees together with applicable statutory interest thereon, within a period of four weeks from the date of receipt of a copy of the said order.

3.1 It is further submitted that though no appeal was preferred by the revenue against the said order of the Bombay High Court, a review petition in R.P.No.98390/2020 was preferred by the revenue and the same was also dismissed by the Bombay High Court vide final order dated 04.10.2021. Thus the order of the Bombay High Court holding that the encashment of the bank guarantees by the GST authorities was illegal and directing refund of the aforesaid sum of Rs.4,73,26,512/- together with applicable statutory interest back to the petitioner attained finality and became conclusive and binding upon the respondents.

3.2 Subsequently, petitioner initiated contempt proceedings in C.P.No.318/2021 against the GST officials, pursuant to which, the GST authorities issued a letter dated 22.10.2021 to the petitioner calling upon the petitioner to file a refund application in terms of Section 54 of the CGST Act and Rule 89 of the CGST Rules. The petitioner submitted a reply dated 06.11.2021 enclosing the refund application. However, the petitioner specifically stated that the refund applications dated 24.11.2021, 30.12.2021 and 30.12.2021 had been filed only at the instance/insistence of the

authorities and were without prejudice to its rights to seek interest on the amount covered under the Bank guarantees.

3.3 Subsequently, on 05.01.2022, the 3rd respondent granted refund to the petitioner in a sum of Rs.4,73,26,512/- in terms of the Bombay High Court judgment, but rejected the interest claimed by the petitioner, as a result of which, petitioner filed one more application dated 31.05.2022. In pursuance of the same, respondents issued a show cause notice dated 30.06.2022 calling upon the petitioner to show cause as to why its claim for interest should not be rejected.

3.4 It is the grievance of the petitioner that despite submitting a detailed reply dated 14.07.2022 and producing all relevant documents, the 3rd respondent proceeded to pass the impugned order denying refund of interest in favour of the petitioner. Aggrieved by the impugned order, petitioner is before this Court by way of the present petition.

In support of his contentions, learned counsel for the petitioner has placed reliance upon the following judgments:-

(i) Areva T & D India Limited vs. Commissioner of Customs - 2013 (290) E.L.T. 496(Mad);

(ii) Sandvik Asia Private Limited vs. Commissioner of Income Tax, Pune I (2006) 2 SCC 508;

(iii) Hello Mineral Water (Private) Limited vs. Union of India – 2004 (174) E.L.T. 422 (All.);

(iv) Sri.Jagdamba Polymers Limited vs. Union of India – 2013 (289) E.L.T. 429 (Guj.);

(v) E.BizCom Private Limited vs. Commissioner of Central Excise, Customs & Service Tax – 2017 (49) S.T.R.389 (All.); and

(vi) Team HR Services Private Limited vs. Union of India – 2020 (38) G.S.T.L.457 (Del.) and

(vii) Ranbaxy Laboratories Ltd., vs. Union of India 7 Othes – 2011) 10 SCC 292;

4. Per contra, learned counsel for the respondents, in addition to reiterating the various contentions urged in the statement of objections, submit that there is no merit in the petition and the same is liable to be dismissed.

5. I have given my anxious consideration to the rival submissions and perused the material on record.

6. The material on record discloses that undisputedly, the respondents encashed the bank guarantees of the petitioner on 23.09.2019 and the same was retained and was lying with them from that date onwards up to 05.01.2022 when the said sum of Rs.4,73,26,512/- was refunded back to the petitioner. In this context, a perusal of the judgment of the Bombay High Court will indicate that the respondents were directed to refund the said amount together with applicable statutory interest thereon, within a period of four weeks. A plain reading of the directions issued by the Bombay High Court will clearly indicate that the petitioner was declared to be entitled to the aforesaid sum of Rs.4,73,26,512/- together with applicable statutory interest and that the said amount together with interest was liable to be paid by the respondents to the petitioner within a period of four weeks from the date of receipt of a copy of the order.

7. In other words, the Bombay High Court not only directed refund of the amount of Rs.4,73,26,512/- covered by the bank guarantee but also directed refund of applicable

statutory interest by the respondents in favour of the petitioner. Under these circumstances, the reasoning of the 3rd respondent in the impugned order that the petitioner was not entitled to interest in terms of the judgment of the Bombay High Court is clearly erroneous and the same deserves to be set aside.

8. A perusal of the impugned order passed by the 3rd respondent will indicate that the claim for refund of interest has been rejected on the ground that apart from the fact that neither Section 115 nor Sections 54 and 56 of the GST Act were applicable to the petitioner, there is no provision under the Act and Rules providing for payment of interest when the amounts encashed under the bank guarantee are directed to be refunded. In this context, it is significant to note that while deciding the claim of the petitioner for refund of the amounts covered by the bank guarantees, at paragraphs 26 and 27 of its order, the Bombay High Court has expressly referred to statutory provisions relating to filing of appeals, payment of interest etc., including referring to Sections 54, 56 and 115 of the GST Act. It is therefore clear that the Bombay High Court was of the definite opinion

that the petitioner was not only entitled to refund of the aforesaid amount of Rs.4,73,26,512/- covered by the 8 encashed bank guarantees but that the petitioner would also be entitled to interest thereon as can be discerned from the judgment of the Bombay High Court and consequently, the said finding recorded in the impugned order deserves to be set aside.

9. A perusal of the judgment of the Bombay High Court will also indicate that directions were issued to the respondents to pay applicable statutory interest within a period of four weeks from the date of receipt of the said order. In this context also, the 3rd respondent has held that the interest on delayed refund in terms of Section 56 would apply only when refund is not made within 60 days from the date of receipt of refund application, if refund is ordered under Section 54(5) of the GST Act. In the instant case, it is an undisputed fact that the petitioner became entitled to refund of the amounts covered under the bank guarantees not by virtue of any order passed under Section 54 and consequently, neither Section 54 nor Section 56 would be applicable for the purpose of considering the claim for

interest on delayed payment. On the other hand, the specific directions issued by the Bombay High Court directing payment of the amounts covered under the bank guarantees together with suitable statutory interest within a period of four weeks is a clear pointer to the fact that the petitioner would be entitled to accrued interest in terms of the judgment of the Bombay High Court and not under either Sections 54, 56 or 115 and as such, on this score also, the erroneous findings recorded by the 3rd respondent in the impugned order deserve to be set aside.

10. The 3rd respondent also committed an error in holding that in the absence of any statutory provision, petitioner would not be entitled to any interest on the refund amount. In this context, as held by the Apex Court and other High Courts in the aforesaid judgments, even in the absence of any statutory provision, in the light of the undisputed fact that the respondents illegally retained and withheld the amounts legally belonging to the petitioner during the period from 29.03.2019 when the bank guarantees were encashed up to 05.01.2022 when the amounts covered thereunder were refunded back to the

petitioner, even in the absence of any statutory provision, the petitioner would be entitled to interest at a reasonable rate on the said amount for the aforesaid period and viewed from this angle also, the impugned order is unsustainable and deserves to be set aside.

11. The undisputed material on record discloses that the petitioner has been wrongly and without any fault on its part been deprived of the use, utilisation and benefit of the aforesaid amount of Rs.4,73,26,512/- during the period from 29.03.2019 up to 05.01.2022, during which period, the respondents illegally withheld and retained the said amount as declared by the Bombay High Court. Under these circumstances also, by applying the principles of restitution and by way of compensation for the loss caused to the petitioner on account of illegal and wrongful deprivation of the aforesaid amount by the respondents, the petitioner would be entitled to interest for the aforesaid period and consequently, the impugned order deserves to be set aside on this ground also.

12. The 3rd respondent has committed an error in recording an erroneous finding that the aforesaid amount of Rs.4,73,26,512/- encashed under the bank guarantees was available with the petitioner during the aforesaid period from 29.03.2019 till 05.01.2022; this finding recorded by the 3rd respondent in the impugned order is clearly and factually incorrect and contrary to the material on record, which indicates that pursuant to encashment of the 8 bank guarantees, the respondents had appropriated the said amount and prevented the petitioner of its use and benefit till the same was actually refunded only on 05.01.2022 and as such, even this finding recorded by the 3rd respondent in the impugned order deserves to be set aside.

13. The aforesaid facts and circumstances and the material on record clearly indicate that the impugned order passed by the 3rd respondent rejecting the interest refund claim of the petitioner is contrary to law and facts and the same deserves to be quashed.

14. The next question that arises for consideration is the rate of interest to be awarded in favour of the petitioner.

In my considered opinion, interest of justice would be met if the respondents are directed to pay interest in favour of the petitioner on the aforesaid amount of Rs.4,73,26,512/- at the rate of 6% p.a. for the period from 29.03.2019 when the bank guarantees were illegally encashed by the respondents up to 05.01.2022 when the aforesaid amount of Rs.4,73,26,512/- was refunded back to the petitioner.

15. In the result, I pass the following:-

ORDER

(i) Petition is hereby partly allowed.

(ii) The impugned order at Annexure-A dated 28.07.2022 passed by the 3rd respondent is hereby set aside.

(iii) The concerned respondents are directed to pay interest at the rate of 6% p.a. on a sum of Rs.4,73,26,512/- for the period from 29.03.2019 to 05.01.2022 in favour of the petitioner as expeditiously as possible and at any rate within a period of two months from the date of receipt of a copy of this order.

**Sd/-
JUDGE**

Srl.