



2024:KER:86611

W.P (C) No.16812/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 19TH DAY OF NOVEMBER 2024 / 28TH KARTHIKA, 1946

WP(C) NO. 16812 OF 2024

PETITIONER/S:

BRADDOCK INFOTECH PRIVATE LIMITED,
MANDARAM, NALUKETTU ROAD, KORATTY, INFOPARK, THRISSUR
DISTRICT, REPRESENTED BY ITS MANAGING DIRECTOR, SAJU
CHACKO, PIN - 680308

BY ADVS.
JOHN VARGHESE
V.THULASEEDHARAN PILLAI

RESPONDENT/S:

- 1 JOINT DIRECTOR GENERAL OF FOREIGN TRADE,
A-BLOCK, 5TH FLOOR, KENDRIYA BHAVAN, KAKKANAD, ERNAKULAM
DISTRICT, PIN - 682037
- 2 DIRECTOR GENERAL,
DIRECTORATE GENERAL OF FOREIGN TRADE, UDYOG BHAVAN, H-
WING, GATE NO. 2, MAULANA AZAD ROAD, NEW DELHI, PIN -
110011

BY ADV ACHUTH KRISHNAN R., CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.R****J U D G M E N T**

The petitioner is a Private Ltd. Company. According to the petitioner it is engaged in '*placement and supply services of personnel*' which was entitled to duty credit scrip as rewards in terms of Chapter 3 of the Foreign Trade Policy (2015-2020) formulated for Service Exports from India in order to encourage/maximise export of certain notified services. Ext.P1 is a copy of public notice No.3/2015-20 dated 01-04-2015 issued by the 2nd respondent enumerating a list of eligible services, rates and conditions for rewards under the Service Exports from India Scheme (hereinafter referred to as 'the Scheme').

2. The petitioner was considered eligible and was granted a duty credit scrip having the value of Rs.8,91,934/- (Eight Lakhs Ninety-one Thousand Nine Hundred Thirty-four only). However, on the basis of certain audit objections, the competent authority found that the petitioner was not entitled to the benefit of the Scheme. According to the competent authority, the services rendered by the petitioner could not be considered as '*placement and supply services of personnel*'. Therefore, the petitioner was required to remit back the amount covered by the duty credit scrip issued to the petitioner. According to the petitioner the said amount was forthwith paid by the



petitioner without raising any further dispute. The petitioner is before this court being aggrieved by the fact that through Ext.P8 communication the petitioner has been informed that the petitioner is also liable for interest under the provisions of Section 28AA of the Customs Act, 1962 (hereinafter referred to as 'the 1962 Act').

3. Sri. John Varghese, the learned counsel appearing for the petitioner submits that the petitioner is not disputing the demand for repayment of the amount covered by the duty credit scrip issued to the petitioner and the entire amount has been remitted by the petitioner without demur following issuance of Ext.P4 order. The petitioner is only aggrieved by the demand for interest. It is submitted that a reading of the statement filed by the respondents in this case would indicate that they are basing the demand for interest on the provisions of Section 28AA of the 1962 Act. It is submitted that since the provisions of Section 28AA of the 1962 Act have not been made applicable by any provision in the Foreign Trade (Development and Regulation) Act, 1992, (hereinafter referred to as 'the 1992 Act') the demand for interest in terms of the provisions contained in Section 28AA of the 1962 Act cannot be sustained. The learned counsel for the petitioner relied on the judgment of the Constitution Bench of the Supreme Court in ***J.K. Synthetics Ltd. V Commercial Tax Officer; (1994) 4 SCC 276, V.V.S. Sugars v.***



Government of Andhra Pradesh and others; (1999) 4 SCC 192 and ***Bimal Chandra Banerjee v. State of M.P; (1970) 2 SCC 467*** and submits unless the right to collect interest is supported by plenary provisions the demand for interest cannot be justified.

4. The learned Standing counsel appearing for the respondents would submit that the Foreign Trade Policy applicable at the relevant time (01-04-2015 – 31-03-2020) clearly provided in paragraph 3.19 (a) that if any amount is found to be payable by any person who has been granted a benefit under the Scheme such amount will have to be repaid along with applicable interest as contemplated by the provisions of Section 28AA of the 1962 Act. It is submitted that when the policy clearly specifies that the provisions of Section 28AA of the 1962 Act will apply it is not open to the petitioner to contend that the amount of benefit obtained by him is not liable to be refunded together with interest calculated in terms of the provisions of Section 28AA of the 1962 Act.

5. Having heard the learned counsel for the petitioner and the learned Central Government counsel appearing for the respondents, I am of the view that the petitioner is entitled to succeed. No provision of the 1992 Act under which Foreign Trade Policy has been framed has been pointed out to show that the provisions of Section 28AA of the 1962 Act have been made



applicable for levying interest on any person who is found ineligible for any benefit received under the terms of any Scheme under the Foreign Trade Policy. It is true that Chapter 3 of the Foreign Trade Policy which was in operation for the period from 01-04-2015 to 31-03-2020 contemplates that if any person is found to be ineligible for the benefit under any Scheme the amount will have to be refunded along with interest under Section 28AA of the 1962 Act. However, going by the law laid down in the decisions referred to above, I must hold that the provisions of the Foreign Trade Policy cannot by itself authorise the levy of interest under Section 28AA of the 1962 Act as such levy must be supported by plenary legislation. In **J.K. Synthetics Ltd.** (*supra*) a 5 Judge Bench of the Supreme Court held thus:-

“16. It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See Whitney v. IRC [1926 AC 37 : 42 TLR 58] , CIT v. Mahaliram Ramjidas [(1940) 8 ITR 442 : AIR 1940 PC 124 : 67 IA 239] , India United Mills Ltd. v. Commissioner of Excess Profits Tax, Bombay [(1955) 1 SCR 810 : AIR 1955 SC 79 : (1955) 27 ITR



20] and *Gursahai Saigal v. CIT, Punjab* [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1]). But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See *Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji* [AIR 1938 PC 67 : 65 IA 66 : 67 CLJ 153] and *Union of India v. A.L. Rallia Ram* [(1964) 3 SCR 164, 185-90 : AIR 1963 SC 1685]). Our attention was, however, drawn by Mr Sen to two cases. Even in those cases, *CIT v. M. Chandra Sekhar* [(1985) 1 SCC 283 : 1985 SCC (Tax) 85 : (1985) 151 ITR 433] and *Central Provinces Manganese Ore Co. Ltd. v. CIT* [(1986) 3 SCC 461 : 1986 SCC (Tax) 601 : (1986) 160 ITR 961] , all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the *Associated Cement Co. case* [(1981) 4 SCC 578 : 1982 SCC (Tax) 3 : (1981) 48 STC 466], that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature.”

The matter was again considered by a 5 Judge bench of the Supreme Court in

V.V.S. Sugars (*supra*) where it was held:-

“6. This Court in *India Carbon Ltd. v. State of Assam* [(1997) 6 SCC 479] has held, after analysing the Constitution Bench



judgment in J.K. Synthetics Ltd. v. CTO [(1994) 4 SCC 276] that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. There being no substantive provision in the Act for the levy of interest on arrears of tax that applied to purchases of sugarcane made subsequent to the date of commencement of the amending Act, no interest thereon could be so levied, based on the application of the said Rule 45 or otherwise.”

In the light of the principles laid down in the judgments referred to above, I am of the opinion that the petitioner is entitled to succeed. Therefore, this writ petition is allowed. Ext.P8 demand is quashed. It is held that the petitioner is not liable to pay interest under Section 28AA of the 1962 Act on the amounts repaid by the petitioner on the petitioner being found ineligible for the benefit of the Scheme introduced by the Foreign Trade Policy which was in force for the period from 01-04-2015 to 31-03-2020. The writ petition will stand ordered accordingly.

Sd/-
GOPINATH P.
JUDGE

AMG



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APPENDIX OF WP(C) 16812/2024

PETITIONER EXHIBITS

Exhibit P-1	TRUE COPY OF THE PUBLIC NOTICE NO. 3/2015-20 DATED 01-04-2015 ISSUED BY THE 2ND RESPONDENT
Exhibit P-2	TRUE COPY OF THE LETTER DATED 07-08-2019 ISSUED BY THE 1ST RESPONDENT
Exhibit P-3	TRUE COPY OF THE JUDGMENT DATED 17-02-2022 IN W.P. (C) NO.25200/2021
Exhibit P-4	TRUE COPY OF THE ORDER DATED 31-03-2022 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT
Exhibit P-5	TRUE COPY OF THE RECEIPT DATED 03-06-2022 FOR ₹. 3 LAKHS ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT
Exhibit P-6	TRUE COPY OF THE RECEIPT DATED 11-07-2022 FOR ₹. 3 LAKHS ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT
Exhibit P-7	TRUE COPY OF THE RECEIPT DATED 08-08-2022 FOR ₹. 2,91,935/- ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT
Exhibit P-8	TRUE COPY OF THE LETTER DATED 08-01-2024 DEMANDING INTEREST, ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER