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UNION OF INDIA AND ORS.

v.

M/S UPPER GANGES SUGAR AND INDUSTRIES LTD.

JANUARY 5, 2005

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[S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.]

Central Excises and Salt Act, 1944:

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Interest—Sugar—Rebate on excess of excess production—Granted partly by Assistant Collector—Tribunal allowing the balance claim but not granting prayer of assessee for interest thereon—Later, assessee filing application claiming interest on the balance amount of rebate—Held, as the Tribunal had not granted assessee's prayer for interest, assessee could not be allowed interest by claiming it again at a later date.

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Practice and Procedure: Government litigation—Lacking in proper pleadings and prosecution—SLP filed by Revenue before Supreme Court—Relevant documents not filed with paper books—Nor instructions and relevant documents supplied to Advocate-on-record—Court noticing these facts in matter after matter—Such practice deprecated.

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In a claim for rebate on excess of excess production of sugar, the appellant-assessee was partly allowed the benefit by the Assistant Collector by his order dated 8.1.1976. Ultimately, the Tax Tribunal, by its order dated 21.1.1992, allowed the balance claim. However, the Tax Tribunal did not grant the prayer of the assesseees for 18% interest on the said balance amount. Later, the assessee filed an application claiming 18% interest on the balance amount from 8.1.1976 to 28.1.1992. The claim was rejected by the Assistant Collector and the order was affirmed by the Collector (Appeals) as also by the Tax Tribunal. But the High Court allowed the assessee's writ petition holding that it was entitled to 10% interest. Aggrieved, Revenue filed the present appeal.

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Allowing the appeal, the Court

HELD: 1.1 Having already made a prayer and the same not having been granted by the Tax Tribunal, it was not open to the assessee to again

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make a claim for interest. [143-E]

1.2. Besides, the question whether the assessee was entitled to credit of the balance amount as claimed, was *bona fide* agitated. It was only in 1992 that this question was settled by the Tax Tribunal. This, therefore, is not a case where the money had been withheld unjustifiably. Thus, even presuming, in law interest can be granted on grounds of equity, this is not a case where such principles could be applied. [144-A-B]

2.1. The application of the assessee for interest was not rejected on the ground that the interest had not been granted by the Tribunal. It was merely rejected on the ground that there was no provision under the Central Excises and Salt Act for payment of interest. If that be so, then in the absence of any provision in the contract or any other statutory provision, interest could not have been awarded. Even in the SLP before this Court, there is no ground that interest could not have been claimed as it had not been granted by the Tribunal. However, this being merely a question of law cannot be ignored by this Court. [143-E-H]

2.2. Further, it has been noticed that in matter after matter, relevant documents have not been filed with the paper books by Revenue authorities. The Court has been informed that no officer is coming forward to give any instructions to the counsel or to supply any documents. Even with the stakes being so high there is apparent callousness and negligence on the part of the Revenue authorities. It is hoped that this sorry state of affairs will get remedied and proper instructions given and documents supplied to the Advocates-on-Record and the arguing counsel.

[142-H; 143-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3018 of 1999.

From the Judgment and Order dated 16.1.1998 of the Allahabad High Court in C.M.W.P. No. 583 of 1997.

R. Venkataramani, G. Umopathy, P. Parmeswaran, Ashok Panigrahi and S. Gowthaman for the Appellants.

Sudhir Chandra Agarwal, K.V. Vishwanathan, Ms. Gauri Rasgotra, Achintya Dvivedi and Sanjeev K for the Respondent.

The Judgment of the Court was delivered by

A S.N. VARIAVA, J. This Appeal is against the Judgment of the Allahabad High Court dated 16th January 1998.

Briefly stated the facts are as follows.

B On 12th October 1974, the Central Government issued Notification No. 145 of 1974 granting certain rebates on sugar. On 1st August 1975, the Respondents submitted a claim for Rs. 27,84,474. The Respondents claimed this amount as a rebate by calculating excess on excess production for the period 1st December 1974 to 30th September 1975. The Assistant Collector was of the view that the rebate could only be claimed on excess of average production. Therefore, by an Order dated 8th January 1976, he allowed a
C rebate of only Rs.12,76,621.

The Respondents filed a Writ Petition No.762 of 1981 before the Allahabad High Court claiming credit for the balance amount of Rs.15,07,791. By an Order dated 7th December 1981, the Respondents were directed to exhaust the remedy of Appeal as provided under the statute. The Respondents then filed an Appeal, which was dismissed on 8th January 1976 by the Collector (Appeals). The Respondents filed a further Appeal to the Tribunal. The Tribunal by its Order dated 28th January 1992 held that the rebate was to be granted on excess of excess production. Thus, the Appeal of the Respondents was allowed with consequential reliefs, i.e., that they were to receive a credit in the sum of Rs.15,07,791 in their PLA Account. Pursuant to the Order of the Tribunal, the Respondents were given credit in the above mentioned sum.
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On 1st May 1993, the Respondents filed an application before the Assistant Commissioner claiming interest on the sum of Rs.15,07,791 at 18% from 8th January 1976 to 28th January 1992. They made this claim on the ground that they were entitled to compensation for the amount not having been paid to them earlier. This application was rejected by the Assistant Collector on 21st December 1993. The Collector (Appeals) dismissed the Appeal of the Respondents by an Order dated 1st August 1994. The Respondents filed a further Appeal to the Tribunal, which was also rejected on 3rd May 1997. The Respondents then filed a Writ Petition in the Allahabad High Court which has been allowed by the impugned Judgment. It has been held that the Respondents are entitled to interest at the rate of 10%.
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This matter, like so many others on our Board for the last few months, indicates the negligent and callous manner in which the Revenue is dealing
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with litigation. In matter after matter, we have found that relevant documents have not been filed with the paper books. Even at the time of hearing neither the Advocate-on-Record nor arguing Counsel have the relevant documents with them. In most cases it is the other side which supplies the relevant documents. On being queried by Court, Counsel frankly states that no officer is coming forward to give any instructions or supply any documents. Even with the stakes being so high there is apparent callousness and negligence on the part of the Revenue authorities. It is hoped that this sorry state of affairs will get remedied and proper instructions given and documents supplied to the Advocates-on-Record and the arguing counsel.

In this matter, the question before the Court is whether the Respondents were entitled to interest on the amount of Rs. 15,07,791. Both parties have argued at great length and cited a number of authorities as to when interest can or cannot be granted. In our view, for the purposes of this case, it is not necessary to go into the larger question whether or not interest can be granted for delayed payments.

In this case, in our view, there are two reasons why interest could not have been granted. The Respondents have very fairly handed over to the Court the Appeal filed by them before the Tax Tribunal and the Order dated 28th January 1992. In the Appeal filed by them, the Respondents had prayed for interest at the rate of 18% per annum with effect from 8th January 1976 till payment. As already noted above, the Tribunal upheld the contention of the Respondents that they were entitled to credit, but the Tribunal did not grant interest. Having already made a prayer and the same not having been granted, it was not open to the Respondents to again make a claim for interest.

It must be mentioned that when the Respondents again made a claim for interest, on 1st May 1993, their claim is not rejected on the ground that the same has not been granted by the Tribunal. It is merely rejected on the ground that there is no provision under the Central Excise and Salt Act for payment of interest. Even in the S.L.P. before this Court there is no ground that interest could not have been claimed as it had not been granted by the Tribunal. It is only when Court asked for relevant papers and Respondents fairly handed over to the Court copies of their Appeal and the Order of the Tribunal that it was noticed that such a prayer had been made and had not been granted. Mr. Sudhir Chandra has submitted that Appellants should not be allowed to take up this contention as there is no such ground in the SLP. However, in our view this is merely a question of law and thus cannot be

A ignored by this Court. As the Tribunal had not granted interest, Respondents cannot be allowed interest by claiming it again at a later date.

B The second ground on which the Respondents are not entitled to interest is that this is not a case where the question, whether they were entitled to the credit of Rs.15,07,791, was free from doubt. This was a question which was *bona fide* agitated. It is only in 1992 that this question was settled by the Tax Tribunal. This therefore is not a case where the money had been withheld unjustifiably. Thus even presuming, in law interest can be granted on grounds of equity this is not a case where such principles could be applied. If that be so, then in the absence of any provision in the contract or any statutory provision, interest could not have been awarded.

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For the above reasons, the impugned Judgment cannot be sustained. It is hereby set aside. The Appeal stands allowed. There will however be no order as to costs.

R.P.

Appeal allowed.