

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

CEA.No. 195 of 2011

Dt.26.03.2026

Between:

Virchow Laboratories Ltd.

.... Appellant

and

The Commissioner of Customs & Central Excise

...Respondent

JUDGMENT: *(Per the Hon'ble Sri Justice Suddala Chalapathi Rao)*

1. The instant appeal has been filed against the common final order Nos.576 & 577/2011, dt.17.08.2011, passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zone Bench at Bangalore (for short 'CESTAT') in Appeal No.E/1124/2006.

2. The brief facts of the case are that the appellant is a company engaged in the manufacture and export of bulk

drugs; that in the middle of January, 1997, the jurisdictional Central Excise Superintendent, directed the appellant to pay Rs.31,52,256/- alleging that the appellant had violated the Customs Notification No.203/92, dt.19.05.1992 and was therefore, liable to pay interest as per the amnesty scheme announced by the Director of Drawback *vide* letter DOF. No.605/140/95-DBK, dt.03.01.1997. As the Superintendent threatened to stop the export clearances, if the said direction was not complied with on or before 31.01.1997, the appellant was forced to deposit Rs.31,52,256/- on 31.01.1997 under protest. Subsequently, as the appellant was not liable to pay the said amount, it had filed a refund claim to the Jurisdictional Assistant Commissioner of Central Excise on 02.06.1997 and the Assistant Commissioner refused to refund the said amount stating that the appellant was liable to pay the said amount as interest for violating the conditions of Customs Notification No.213/92, dt.19.05.1992.

3. Assailing the said order, the appellant had filed an appeal before the learned CESTAT by raising a question of law and fact as to whether the appellant violated the conditions

envisaged under Notification, No.203/1992-CUS, and whether the appellant was liable to pay the said amount as interest to the Department for violation of the said notification.

4. The learned CESTAT *vide* Final Order No.548/2006, dt.09.03.2006 categorically held that the appellant is not bound by the Customs Notification No.203/92, dt.19.05.1992 and that there are no violations committed by the appellant and further held that the amnesty scheme announced by the Director of Drawback will not apply to the appellant, and the learned CESTAT concluded that the appellant was not liable to pay any amount to the Department and directed the Department to refund the said amount to the appellant in accordance with law with an observation that if the amount is not paid within three (03) months from the date of receipt of the application for refund as and when made by the appellant, under Section 11BB of Central Excise Act, 1944 (for short 'the Act, 1944'), the appellant becomes entitled to interest for the said period.

5. Further, pursuant to the learned CESTAT's Final Order No.548/2006, though the appellant made refund application on 02.06.1997, the Assistant Commissioner refunded the amount of Rs.31,52,256/- only on 02.07.2006, and the Department refused to pay interest for the delay of refund for more than nine years from the date the refund application, i.e., from 02.06.1997 to 02.07.2006, stating that the said amount originally was collected as "interest" and not as "duty," and therefore, no interest could be granted on such amount, as it would amount to paying interest on interest.

6. Aggrieved by the refusal of payment of interest, the appellant filed an appeal before the Commissioner of Central Excise (Appeals) and the Commissioner, *vide* order dt.31.10.2006, rejected the claim for interest to the appellant.

7. Aggrieved by the refusal order, dt.31.10.2006, the appellant then filed a further appeal before the learned CESTAT and in addition to claiming interest on the delayed refund from 02.06.1997 to 02.07.2006, the appellant also sought interest on the unpaid interest amount, by placing

reliance on the judgment of the Hon'ble Supreme Court in the case of ***Sandvik Asia Ltd v. Commissioner of Income Tax***¹,. However, the learned CESTAT *vide* Final Order Nos. 576 and 577/2011, dt.17.08.2011, dismissed the appeal and rejected both the claim for interest on the delayed refund of the principal amount and the claim for further interest on the unpaid interest and assailing the said orders of the learned CESTAT, the instant appeal is filed before this Court under Section 35G of the Act, 1944.

8. Although several substantial questions of law were raised in the appeal, the sum and substance of those questions, and the main issue that requires consideration by this Court

Whether the appellant is entitled for interest for the delayed period from 02.06.1997 to 02.07.2006, and also further interest on such unpaid interest from 02.07.2006 onwards till the actual realization?.

9. Heard Sri Muthuma Rajendran, learned counsel representing Sri Karthik Ramana Puttamreddy, for appellant and Sri A.Ramakrishna Reddy, learned Senior Standing

¹ 2006 (196) ELT 257 (SC)

Counsel for the Central Board of Excise and Customs (CBEC) for respondent.

10. The learned counsel for the appellant contended that the amount of Rs.31,52,256/- was forcibly collected by the respondents-authorities on 31.01.1997, and was refunded only on 02.07.2006, after prolonged and multiple rounds of litigation, though the appellant is entitled for interest, the Department has refused to pay the same on erroneous views and facts.

10.1 By placing reliance on the judgment of the Hon'ble Supreme Court in **Sandvik Asia Ltd's** case(supra), it was contended by the learned counsel that when the assessee fails to pay the due amount, the department forcibly collects the duty and the interest thereon. It is contended that, in the instant case, though the assessee was not liable to pay the interest, the Department forcibly collected the interest and when excess tax is collected or any amount is wrongfully withheld without authority of law, the Department is bound to compensate the assessee. On this basis, it was contended that

the appellant is entitled to interest for the delayed refund of the amount that was forcibly collected and also to further interest on the said unpaid interest.

11. *Per contra*, Sri A. Ramakrishna Reddy, learned Senior Standing Counsel, contended that though Section 11BB of the Act provides for payment of interest on refund of the principal amount, admittedly, in the present case, since the amount in question was collected as interest under the amnesty scheme and was later refunded to the assessee, no further interest is payable on such amount. He further contended that it is a settled legal principle that interest on interest cannot be granted for the disputed period, and since the principal amount collected as interest has already been refunded, the appeal is not maintainable and is liable to be dismissed.

12. We have given earnest consideration to the submissions of the learned counsel appearing on either side and perused the record.

12.1 Now that the main issue is, in the absence of any provision, whether the assessee is entitled for the interest on

the delayed refund of the amount that was forcefully collected by the respondents-authorities and whether interest is payable on such unpaid interest from 02.06.1997 to 02.07.2006 and also further interest on the said amount, till realization.

13. In the facts of this case, while the Customs Act, 1962, does not expressly provide for payment of interest on the interest collected wrongly, it is trite law that when an amount is wrongfully collected or withheld from an assessee without legal authority, the Revenue is bound to compensate the assessee. More so, section 11BB of the Act, 1944, mandates payment of interest for delayed refunds from the expiry of three-months period from the date of receipt of the refund application until the actual refund is made.

14. The Hon'ble Supreme Court in **Sandvik Asia Ltd's** case (supra) has held as under:

“28. In our view, there is no question of the delay being 'justifiable' as is argued and in any event if the revenue takes an erroneous view of the law, that cannot mean that the withholding of monies is 'justifiable' or 'not wrongful'. There is no exception to the principle laid down for an allegedly

'justifiable' withholding, and even if there was, 17 (or 12) years delay has not been and cannot in the circumstances be justified.

Does the Act provide for payment of compensation for delayed payment of amounts due to an assessee in a case where these amounts include interest?

29. In our view, the Act recognizes the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee.

45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under [Sections 214](#) and [244](#) of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No.1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has

failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.”

15. In ***Sandvik Asia Ltd's*** case (supra), the Hon'ble Supreme Court further held that forceful collection of interest

from the assessee cannot deprive the assessee from entitlement of interest on the said portion and even in the absence of any provision, compensation for delay is required to be paid.

16. In the instant case, the interest of Rs.31,52,256/- on the duty paid was forcefully collected from the assessee, even though the Revenue was not entitled to collect the same and for a considerable period from 1997 to 2006, the said amount was kept with the revenue and only in the year 2006, the said amount was refunded to the assessee.

17. In **Sandvik Asia Ltd's** case (supra), it was categorically held by the Hon'ble Supreme Court that even in the absence of specific provision, the amounts collected forcefully from the assessee should not be kept with the revenue for a longer period and that the Court further held that the assessee is also entitled for interest on the said amount.

18. Thus, in the light of the above judicial precedents, in our considered view, the Revenue cannot act in contradicting ways, i.e., on one hand demanding interest from the assessee

for the delay in payment of duties, and on other hand refusing to pay interest on the amount that was wrongly collected. This would be unfair and unjust, on the part of the Department, since the delay was caused entirely by the Revenue retaining the funds and they are bound to compensate the assessee.

19. In that view of the matter, the respondent is directed to pay interest @ 7.5% from the date of claim for refund to the date of actual payment of refund claim i.e., from 02.06.1997 to 09.03.2006, and thereafter pay further interest @ 6% p.a., on the unpaid interest amount for the period from 09.03.2006 to 29.11.2011(till the filing of appeal before this Court) within a period of (06) weeks from the date of receipt of a copy of this order.

20. Insofar as payment of further interest on such unpaid interest from 29.11.2011 onwards, it is clarified that the appellant/assessee is not entitled to the same, as the matter has remained pending adjudication before this Court, and the respondent-Revenue cannot be penalized for no fault of it.

21. Accordingly, the instant appeal is ALLOWED. No order as to costs.

As a sequel, miscellaneous applications pending if any, shall stand closed.

P.SAM KOSHY, J

SUDDALA CHALAPATHI RAO, J

26th March, 2026

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