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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE RAVI MALIMATH,  
CHIEF JUSTICE**

**&  
HON'BLE SHRI JUSTICE VISHAL MISHRA  
ON THE 14<sup>th</sup> OF JUNE, 2022**

**WRIT PETITION No. 15476 of 2021**

**Between:-**

**INDRAPRAST TRADERS, TRADER OF TEXTILES  
AND ALLIED RAW MATERIALS, THROUGH ITS  
PROPRIETOR ANKIT MISHRA, M-306 VIJAY  
STAMBH, ZONE-I, M.P. NAGAR BHOPAL (M.P.)**

**.....PETITIONER**

**(BY SHRI K.C. GHILDIYAL - SENIOR ADVOCATE WITH SHRI  
ADITYA VEER SINGH - ADVOCATE)**

**AND**

- 1. COMMISSIONER CUSTOMS, CENTRAL EXCISE  
AND SERVICE TAX, 48 ADMINISTRATIVE AREA,  
ARERA HILLS, HOSHANGABAD ROAD, BHOPAL  
(M.P.)**
- 2. THE DEPUTY COMMISSIONER OF CUSTOMS,  
INLAND CONTAINER DEPOT, 34, NEW  
INDUSTRIAL AREA, SECTOR 1A, MANDIDEEP,  
DISTRICT-RAISEN (M.P.)**

**.....RESPONDENTS**

**(BY SHRI G.S. THAKUR - ADVOCATE)**

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*This petition coming on for admission this day, Hon'ble Shri Justice  
Ravi Malimath, Chief Justice passed the following:*

**ORDER**

The case of the petitioner is that it is a trader of textiles and allied raw material. That it had presented 14 shipping bills to claim duty drawback at ICD Mandideep on 18.9.2010 for export of consignment of man-made fiber jeans to UAE. On 23.11.2010, a notice was issued to the petitioner by respondent No.2

to show cause as to why confiscation of goods valued at Rs.2,97,66,478/- under Section 113 of the Customs Act and penalty under Section 114 as well as personal penalty under Section 114 (iii) of the Act be not imposed. A reply was furnished. Considering the same, the final order was passed on 30.4.2011 directing confiscation of goods. Since the goods were already released provisionally on execution of bond along with a Bank Guarantee, a redemption fine of Rs.20 Lakhs was imposed under Section 125 of the Customs Act. A penalty of Rs.10 Lakhs was imposed under Section 114(iii) of the Customs Act. Thereafter, an amount of Rs.30 Lakhs was recovered by the respondents by invoking the Bank Guarantee.

The said order was assailed before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at New Delhi in Case No.C/S/53196/2016-CU (DB). By the order dated 24.8.2016, the appeal was allowed and the order dated 30.4.2011, namely, the final order was set aside. Consequently, the petitioner was entitled for the refund of Rs.30 Lakhs along with interest from the date of deposit. However, the respondents failed to make the aforesaid amount in spite of the orders of the CESTAT. Thereafter, the petitioner was issued a notice to show cause as to why the claim made by the petitioner should not be rejected and disallowed in terms of Section 27 of the Customs Act since the same was barred by time. A reply was furnished. Thereafter, the refund claim made by the petitioner was rejected on the ground that it is barred by limitation as well as on merits. Questioning the same, the instant petition is filed.

Shri K.C. Ghildiyal, learned Senior Counsel appearing for the petitioner's counsel submits that the acts of the respondents in denying the amounts due to him are erroneous. That it is with the mala fide intention that the respondents

have withheld the payments to be made. That subsequent to the order passed by the CESTAT, the respondents had no other option but to release the said amount of Rs.30 Lakhs. They have deliberately and intentionally refused to do so. They have raised contentions which are not tenable in law. Hence, he pleads that the petition be allowed by directing the respondents to release the said amount along with the interest at 24% per annum.

The respondents have filed their reply. They have raised a preliminary objection that under sub-section (3) of Section 27 of the Customs Act no refund can be made except as provided in sub-section (2). Since in the present case the order in original was set aside by the CESTAT, the petitioner's claim for refund cannot be considered. Various grounds have been raised by the respondents on merits as to deny the claim of the petitioner. Hence, it is pleaded that the petition be dismissed.

Heard learned counsels.

The learned counsel for the respondents submits that the petitioners are not entitled to claim any refund since the same is hit by the provisions of sub-section (3) of Section 27 of the Customs Act. We are unable to accept such a submission. The question of refund of tax is not the subject matter of these proceedings. In terms of the order of the CESTAT, the respondents were duty bound to return the amount of Rs.30 Lakhs. They have failed to do so. It is not an amount of refund but an amount of payment of money in terms of the order passed by the CESTAT. If the contention of the respondents is to be accepted, then the view of the respondents would amount to sitting in appeal over the order of the CESTAT. The order passed by the CESTAT is a judicial order. It requires to be complied and followed. There cannot be any excuses for the same. Therefore, the submission that the same is hit by sub-section (3) of

Section 27 of the Customs Act, is unacceptable.

The second contention raised is that there was some dispute with regard to the address of the petitioner. We fail to understand as to how such a submission could be made. The question of an error in address even if it is to be accepted, cannot constitute a ground for withholding the payment of Rs.30 Lakhs. Even if the contention of the respondents is to be accepted, the question of the address should have been clarified when there was a communication by the petitioner. If not, the same could have been clarified even at the belated stage of filing of the writ petition before this Court. None of that has happened. Therefore, it would appear that such a contention has been raised not only to protract the litigation but to deny the petitioner his legal entitlement.

After litigating in a court of law when orders are passed in favour of the petitioner, they are required to be complied with in letter and spirit. Untenable grounds seeking to question the entitlement of the petitioner, does not lie with the respondents. In case the submissions of the respondents were to be accepted, the same would result in overriding the orders passed by the CESTAT. The same is unacceptable. We are constrained to observe that in the facts of the present case, the respondents were not justified in withholding the said payments. In view of the deliberate withholding of the payments, we are of the considered view that not only the amount is to be returned to the petitioner but they should also be liable to pay interest on the same.

Section 27-A of the Customs Act deals with refund of any claim which is liable to attract interest at the minimum of 5% and the maximum of 30%. We are of the view that the Parliament has enacted this law to ensure that the refunds should carry interest. It would imply that any money belonging to the petitioner,

which is with the possession of the respondents, requires to be returned along with the rate of interest mentioned therein. Therefore, whether it is a refund of claim of tax or payment in terms of the order of the Tribunal, we are of the view that the petitioner should be entitled for the interest.

Keeping in view the peculiar facts and circumstances involved and especially the objections as raised by the respondents, we deem it just and necessary that the respondents be directed to pay interest at the rate of 10% per annum from the date of the CESTAT order till the date the payments are made to the petitioner. The said amounts shall be paid within a period of four weeks from today.

The writ petition is accordingly disposed off.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

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**(VISHAL MISHRA)**  
**JUDGE**

