IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.05.2006

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THE HONOURABLE MR.JUSTICE K.MOHAN RAM

W.P.NO.3718 of 2006 and
W.P.M.P.No.3931 of 2006

S.Parameswaran .. Petitioner

-vs-

1. The Secretary,
Union of India, Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Deputy Director of Enforcement,
Enforcement Directorate,
Shastri Bhavan, 26, Haddows Road,
Chennai - 600 006. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the second respondent herein to refund to the petitioner a sum of Rs.99,800/- (Rupees Ninety nine thousand eight hundred only) seized from the office of the Associated Travel Agency Private Limited at No.3, Blackers Road, Chennai 600 002 on 13.8.1984 and penalty amount of Rs.5,000/- (Rupees five thousand only) paid by the petitioner on 16.9.1996 together with interest at the rate of 18% per annum from the date of seizure to the date of actual deposit.

For Petitioner : Mr.Arvind P.Datar,Sr. Counsel
For Mr.Muizz Ali

For 2nd Respondent: Mr.K.Kumar, Sr. Counsel
For Mr.M.Dhandapani, ACGSC

O R D E R

When the above writ petition came up for admission, the petitioner was directed to serve notice on the Central Government Standing Counsel as well as on the counsel for the second respondent and that is how the matter was listed on 20.2.2006.

Mr.K.Kumar, learned Senior counsel appeared on behalf of the respondents. With the consent of the counsel for the petitioner and the respondents, the writ petition itself is taken up for final disposal. Though no counter affidavit has been filed by the respondents, written submissions have been filed by the second respondent.

2. The short facts that are necessary for disposal of the above writ petition are set out below:

The petitioner, a practicing Chartered Accountant is also a Director in Associated Tribunal Agency Private Limited. The Company, under a valid license from the Reserve Bank of India, carries on business of booking international tickets and arranging tours for its customers. Pursuant to the search conducted by the Officers of the second respondent on 13.8.1984, a sum of Rs.99,800/- belonging to the petitioner was seized and a show cause notice was issued for the alleged violation of Section 9(1)(b) of FERA 1973. Subsequently, proceedings were initiated against the petitioner and on 23.6.1986, an order was passed by the second respondent confiscating the said amount and levying a penalty of Rs.10,000/-. The petitioner paid the penalty amount and the appeal filed by him was dismissed. Aggrieved by that the petitioner and the company filed C.M.A.Nos.1210 and 1211 of 1993 before this Court and the Appeals were allowed by a common order dated 11.4.1997 passed by a Division Bench of this Court. Against the said order, no further appeal has been preferred.

3. Subsequent to the order dated 11.4.1997 passed in the above said C.M.As, the petitioner had written several letters dated 15.7.1998, 25.8.2001, 29.8.2001 and 13.9.2001, requesting the second respondent to return the confiscated amount of Rs.99,800/- and the penalty of Rs.10,000/- together with interest from the date of seizure i.e. 13.8.1984. But the said request was not complied with. Hence the petitioner filed W.P.No.7868 of 2002, seeking for a writ of mandamus and that writ petition was disposed of by an order dated 11.3.2002, directing the second respondent to consider and dispose of the representations of the petitioner for refund of the seized amount and the penalty together with interest, within a period of six weeks from the date of receipt of a copy of that order. Thereafter, the second respondent sent a covering letter dated 24.4.2002, enclosing the Refund Bill for a sum of Rs.1,09,800/-, to be signed and returned by the petitioner. The petitioner by his letter dated 9.5.2002, contended that the second respondent could not disregard his claim for interest. For that, the second respondent sent a reply dated 18.6.2002, stating that the petitioner's claim for interest could not be

considered, as there is no provision in FERA 1973 for payment of interest. Thereafter, the petitioner sent letters dated 24.6.2002, 5.12.2002, 10.5.2003, 21.5.2003 and 4.9.2003 and brought to the notice of the second respondent that in a similar case relating to one Smt.R.Jothimalar, the second respondent had refunded on 21.1.2003, the seized amount of Rs.1,84,490/- together with accrued interest thereon amounting to Rs.6,30,338/-. But, there was no reply from the second respondent. In the said circumstances, the above writ petition has been filed seeking for the issue of writ of mandamus.

4. Heard both sides.

5. Admittedly, there is no dispute regarding the factual aspects. The only question that arises for consideration in the above writ petition is that, whether the High Court acting under Article 226 of the Constitution of India, can direct payment of interest on the refund amount due to the petitioner, eventhough there is no statutory provision relating to interest in FERA 1973.

6. Mr.Arvind P.Datar, learned Senior Counsel for the petitioner submitted that pursuant to the common order dated 11.4.1997 passed in C.M.A.Nos.1210 and 1211 of 1993, the second respondent ought to have refunded the sum of Rs.1,09,800/- . But, as the second respondent failed to refund the said sum, several letters came to be written by the petitioner and ultimately W.P.No.7868 of 2002 was filed. Only pursuant to the order passed by this Court dated 11.3.2002 in W.P.No.7868 of 2002, the second respondent sanctioned the refund of Rs.1,09,800/-, by his letter dated 24.4.2002. But, the claim of the petitioner for interest was negatived on the ground that there is no specific provision in FERA 1973. The learned Senior Counsel also submitted that the issue relating to the power of the High Court to award interest even in the absence of statutory provisions has already been settled by two different Division Benches of this Court in the cases reported in 1991 (52)ELT 165 (Mad) and 1992 (58)ELT 23 (Mad). Further, the learned senior counsel submitted that taking note of the decisions rendered by various High Courts and Supreme Court of India, provisions providing for payment of interest on refund, etc., have been introduced under Section 11 BB of the Central Excise Act and under Section 27 A of the Customs Act with effect from 1995.

7. The learned Senior Counsel further submitted that the Hon'ble Supreme Court of India in the case of SANDVIK ASIA LTD., Vs CIT reported in (2002) 280 ITR 643 (SC), has directed payment of interest on interest in a case arising under the Income Tax

Act, eventhough there is no provision. The learned Senior Counsel further submitted that in the case of one Smt.R. Jothimalar, the Department, returned the principal amount of Rs. 1,84,490/- along with accrued interest amounting to Rs.6,30,338/- vide D.D.No.224014, dated 22.1.2003. Further, the learned Senior Counsel submitted that the amount seized from the petitioner was deposited in Allahabad Bank and the respondents are getting the benefit of interest accrued on such deposit. Therefore, by paying the interest on the refund amount, the respondents will not be incurring any loss, whereas the respondents will be paying the amount towards the interest only from and out of the interest earned by the amount seized from the petitioner and the amount paid by the petitioner as penalty. It is further submitted that when the respondents are wrongfully keeping the amount legally refundable to the petitioner, the petitioner, in equity, is entitled to seek interest on the refund. The absence of any statutory provision in FERA 1973 cannot stand in the way of this Court and the power of this Court under Article 226 of the Constitution of India is wide enough to pass appropriate and equitable orders to secure the ends of justice.

8. Per contra, Mr.K.Kumar, learned Senior Counsel appearing for the second respondent submitted that in this case, the amount sought to be refunded is a Hawala money and inspite of the order passed by the Division Bench of this Court in the said C.M.As, the taintedness has not been wiped out. The learned Senior Counsel further submitted that there is no direction in the order dated 11.4.1997 passed in C.M.A.Nos.1210 and 1211 of 1993, directing refund of the amount to the petitioner. The learned Senior Counsel further submitted that the question of taintedness was not gone into in those C.M.As and no finding whatsoever has been recorded in that aspect and hence, according to the learned Senior counsel, retention of the money beyond the date of the order passed in the above said C.M.As is not wrongful or illegal.

9. It is the further submission of the learned Senior Counsel that in other Acts like, Central Excise Act, Customs Act and Income Tax Act, specific provisions have been incorporated providing for payment of interest under specified circumstances whereas, there is no such provision in FERA 1973. Further, according to the learned Senior Counsel, since, FERA 1973 being a self contained code, in the absence of any specific provision for payment of interest on the refund, this Court exercising the jurisdiction under Article 226 of the Constitution of India, may not direct payment of interest.

10. Written submissions have been filed by the second respondent. In the written submissions, it is submitted that as per the procedure, the seized amount is credited to the Government of India's Account and a Refund Bill in Form No.41 was sent along with covering letter dated 24.4.2002 for the signature of the petitioner but the petitioner did not affix his signature in the Refund Bill to enable the respondents to sanction the refund and therefore the Directorate of Enforcement could not process the case further for refund of Rs.1,09,800/- to the petitioner till date and therefore the contention of the petitioner that the respondents are holding the money illegally and without any authority of law, is not correct. It is further submitted that there is no provision either in FERA 1973 or in FEMA 1999, enabling the payment of interest on refund, though similar such provisions are incorporated in the other Acts like Customs Act, Central Excise Act and Income Tax Act. Therefore, cases arising under FERA should not be equated with the cases arising under other Enactments.

11. In the written submissions, it is also submitted that, what was refunded is the parties own money paid in excess as duty. But, in this case the money seized by the Enforcement cannot be said to be legal nor a clear finding on fact to that effect is on record in the proceedings. Further, it is submitted that the decisions of the Madras High court reported in 1991 (52) ELT. 165(Mad) and 1992 (58) ELT. 23 (Mad), in which relief has been granted on the ground of principles of equity, may not be correct position in law, in view of the settled principles that there is no intendment or equity in taxing/Revenue statutes.

12. In support of the said contentions, reliance is placed on the following Judgments, viz.,:

1. AIR 1993 SC 2288 - M/S OSWAL AGRO MILLS LTD. Vs COLLECTOR OF CENTRAL EXCISE

2. AIR 1995 SC 140- HH.LAXMI BAI & ANOTHER Vs COMMR. OF WEALTH TAX

3. 2006 (193) ELT 536- (DB) (GUJ.)

4. AIR 1996 SC 2402 (Para 22 in page No.2409) CENTRAL BUREAU OF INVESTIGATION Vs. STATE OF RAJASTHAN.

13. In the written submissions, second respondent has submitted that the Director of Enforcement had requested the petitioner to submit Form 41, but the petitioner chose not to submit the same, but even now the second respondent is prepared to refund the sum of Rs.1,09,800/-. It is also stated in the written submissions that the petitioner has not chosen to explain the delay in filing the writ petition.

14. Mr.Arvind P.Datar, learned Senior Counsel submitted that in view of the Division Bench Judgments of this Court and the Judgment of the Hon'ble supreme Court of India, reported in the case of SANDVIK ASIA LTD., Vs. CIT (2006) 280 ITR 643, the submission of the second respondent that FERA 1973 being a self-contained code and in the absence of any enabling provisions in the statute itself no interest on refund can be paid, is liable to be rejected. The learned Senior counsel while referring to the Judgment of the Supreme Court relied upon by the respondents, submitted that the Hon'ble Supreme Court of India has only held that in interpreting taxing statutes, equity has no place and strict construction has to be followed. According to the learned Senior Counsel, when the two Division Benches of this Court and also the Supreme Court of India has awarded interest in the absence of statutory provisions, the same principles are applicable to FERA as well. According to the learned Senior Counsel, the Judgment of the Gujarat High Court, reported in 2006 (193) ELT 536, is not applicable to the facts of this case, since in that case, the question was whether interest can be claimed on pre-deposit in the light of the provisions contained in Section 11 BB of the Central Excise Act, 1944. The learned Senior Counsel further submitted that in view of the decision of the Supreme Court reported in (2006) 280 ITR 643 (SC), the Gujarat Judgment may also be treated as impliedly overruled.

15. Regarding the question of laches, it is submitted that since the same was not argued before the Court, it is not permissible to raise the same in the written submissions.

16. Further, in the written submissions submitted by the petitioner, it is stated that the petitioner has been consistently pursuing the matter with the officials of the Enforcement Directorate, which is evident from the numerous letters written by him and therefore, there is no negligence or supine indifference on the part of the petitioner. However, the following Judgments of the Hon'ble Supreme Court of India have been relied upon to show that the petitioner's case cannot be thrown out on the ground of laches:

1. STATE OF MADHYA PRADESH Vs. NANDALAL JAISWAL
(AIR 1987 SC 251)

2. RAMCHANDRA S.DEODHAR Vs. STATE OF MAHARASTRA
(AIR 1974 SC 259)

3. DEHRI ROHTAS LIGHT RAILWAY CO. LTD. Vs.
DISTRICT BOARD, BHOJPUR (AIR 1993 SC 802).

17. As stated above, there is no dispute regarding the facts. The Hon'ble Division Bench of this court by its order dated 11.4.1997 passed in C.M.A.Nos. 1210 and 1211 of 1993, allowed the Appeals filed by the petitioner and the Company, in which the petitioner herein is a Director. In that order, it has been held as follows:

" 7. ……..

> In the absence of any concrete materials or legally acceptable evidence to prove the basic and essential fact that Hameed Abdul Kader was at the relevant point of time a resident outside India, there was no scope for condemning the appellants as being guilty of the violations alleged. In the light of our conclusion that the visiting card by itself is no sufficient proof to decide the status of the said Hameed Abdul Kader to be resident outside India at the relevant point of time. We have to come to the only conclusion that the charges of alleged violation of sections (1)(a) and 9(1)(b) of the Act have not been substantiated against the appellants. The orders of the authorities below, therefore, suffer serious infirmity in law and are liable to be and are hereby set aside. The appeals are allowed."

In view of the clear findings recorded by the Hon'ble Division Bench of this Court, the contentions of Mr.Kumar, learned Senior Counsel for the respondents that the Division Bench had not gone into the question of taintedness of the money seized and no findings in that aspect has been recorded and there is no direction for refund of the amount, are liable to be rejected. When the Hon'ble Division Bench has found that there was no scope for condemning the appellants as being guilty of violations alleged and the orders passed against the petitioner have been set aside, it is clear that the petitioner has been absolved of all the allegations leveled against him. There need not be any specific direction in the order passed in the C.M.A.s for refund. In the light of the fact that the second respondent

himself had not taken such a plea either in the earlier writ petition filed by the petitioner or in the reply sent by him to the petitioner and further, the fact that the second respondent himself had offered to refund the amount and sent Form 41 to the petitioner, the contention of the Senior Counsel is liable to be rejected. For the same reasons, the contentions of the learned Senior Counsel regarding the taintedness of the money seized is liable to be rejected.

18. Coming to the question of laches, it has to be pointed out that the same was not argued by the learned Senior Counsel. But it has been faintly raised in the written submissions.

19. In the case of STATE OF M.P. AND OTHERS Vs. NANDALAL JAISWAL AND OTHERS reported in AIR 1987 SC 251, in paragraph 23, it has been observed as follows:

> "23. …..
>
> When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction."

20. In the case of RAMCHANDRA SHANKAR DEODHAR AND OTHERS Vs. THE STATE OF MAHARASHTRA AND OTHERS reported in (AIR 1974 SC 259), it has been observed as follows:

> "9. ……..
>
> It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on grounds of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay."

21. In the case of DEHRI ROHTAS LIGHT RAILWAY COMPANY LIMITED Vs. DISTRICT BOARD, BHOJPUR AND OTHERS reported in (1992) 2 SCC 598b, in paragraph 13, it is observed as follows:

> "13. …….
>
> The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the

delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches."

22. The above said decisions have clearly laid down that if no third party rights have been created and the conduct of the writ petitioner is not willful or wanton so as to deny relief, the writ petitioner is entitled to get the relief claimed. If the case on hand is considered in the light of the above said principles laid down by the Hon'ble Supreme Court of India, the petitioner cannot be denied the relief sought for by him on the ground of laches for the following reasons, viz:

(i) The conduct of the petitioner cannot be said to be willful or wanton and there was no unexplained delay in this case and in fact in the considered view of this Court, there is no delay on the part of the petitioner in approaching this Court. The facts narrated above clearly shows that the petitioner had been knocking at the doors of the second respondent at frequent intervals and in fact had to approach this Court on an earlier occasion and only thereafter the second respondent came forward to refund the amount and that too without interest. Thereafter also, the petitioner sent several representations and had ultimately filed the above writ petition. In the light of the various steps taken by the petitioner, it cannot be said that there is any delay much less wanton delay or negligence on the part of the petitioner in approaching this court.

(ii) It is not the case of the second respondent that any third party right has been created.
Therefore, the above contention of the second respondent is liable to be rejected.

23. Now, the main question as to whether this Court acting under Article 226 of the Constitution of India is empowered to direct payment of interest on the refundable amount due to the petitioner in the absence of any statutory provision in FERA 1973 relating to payment of interest, has to be considered in the light of the law laid down by this Court and the Hon'ble Supreme Court of India.

24. In the case of UNION OF INDIA Vs. COROMANDEL PRODORITE LTD reported in 1991 (52) E.L.T. 165 (Mad.), it has been held as follows:

"5. ……

The absence of provision, however, cannot prevent a Court from exercising its jurisdiction in exercise of the powers under Art. 226 of the Constitution of India so as to do justice between the parties and make an order in equity. As the Court of Equity, the High Court, while exercising powers under Art. 226 of the Constitution of India, has to reach out to undo injustice. There is no bar imposed upon the courts for granting to a citizen interest on the amounts which have been illegally and without any authority of law have been withheld from the citizen. ….

6. …….

we find on the admitted facts that the appellant had wrongfully withheld the refund of Rs.34,41,085-47, the excess duty which it had collected by mistake. No justification has been offered for withholding the refund of the amount from the respondent. These circumstances clearly attract the equitable jurisdiction of this Court and there can, therefore, be no doubt that interest could be allowed to the respondent on the amount which was wrongfully withheld from it. The facts are not in dispute in the case. The circumstances are tell-tale. Of course, there is no express provision of law, authorizing the award of interest under the Act, but that, however, would not affect the general equitable principle which is well recognized in law and is almost a part of the law of the land that for wrongful withholding of his money, a party may be relieved by payment of interest, particularly when the other party has been enjoying the benefit of the retained amount. The point for consideration in each case would depend upon the facts and circumstances of the case and no hard and general rule can be laid down but the Court's jurisdiction to undo injustice cannot be doubted. The unreasonableness of the attitude of the appellant, coupled with the nature of the claim made by the respondent for refund and the factum that the amounts were repaid, as noticed in the earlier part of the judgment, are relevant factors which have to be taken into consideration and, in our opinion, they

sufficiently attract the principles of equity warranting and justifying the payment of interest on the money improperly withheld by the appellant……..”

The above said decision squarely applies to the facts of this case, though that case arose under the Central Excise Act.

25. In the case on hand, the amount seized from the petitioner and the amount of penalty paid by the petitioner had admittedly been deposited in the Allahabad Bank and the same were earning interest and the respondents are enjoying the benefit of the retained amount. The unreasonable attitude of the second respondent in not refunding the amount inspite of the order passed by the Division Bench of this Court in C.M.A.Nos.1210 and 1211 of 1993, necessitated the petitioner to file W.P.No.7868 of 2002 and only after the order dated 11.3.2002 passed in the said writ petition, the second respondent by his letter dated 24.4.2002, offered to refund the amount. The claim made by the petitioner for refund is legal and the demand for interest on the refundable amount cannot be said to be unreasonable.

26. In the case of COLLECTOR OF CENTRAL EXCISE Vs. THERMO ELECTRIC MADRAS MANUFACTURING reported in 1992 (58) E.L.T.23 (Mad.), the Division Bench of this Court upheld the order of the learned Single Judge awarding interest at 18 % per annum in a case arising under the Central Excise Act. Recently, in the case of SANDVIK ASIA LTD., Vs. COMMISSIONER OF INCOME-TAX AND OTHERS reported in ((2006) 280 ITR 643 (SC)), the Hon’ble Supreme Court directed payment of interest on interest, eventhough there is no provision to that effect in the Income Tax Act. In that decision, it is laid down as follows:

“Even assuming that there is no provision for payment of compensation, compensation for delay is required to be paid as the Act itself recognizes in principle the liability of the Department to pay interest when excess tax was retained and the same principle should be extended to cases where interest was retained.”

The above said decision of the Hon’ble Supreme Court of India clearly lays down that even if there is no provision for payment of compensation (interest), the compensation for delay is payable on the amount wrongfully withheld by the Department.

27. The contentions of the learned Senior Counsel for the second respondent based on the Judgments of the Hon'ble Supreme Court of India has to be considered. In the case of M/S OSWAL AGRO MILLS LTD. VS. COLLECTOR OF CENTRAL EXCISE (AIR 1993 SC 2288), in paragraph 3, it is observed as follows:

"3. …….

> To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules or interpretation put up thereon. For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor anything can we delete but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or Rules. There is no room for assumption or presumptions. The object of the Parliament has to be gathered from the language used in the statute".

28. In the written submissions, by picking out the following sentence viz.,

"There is neither intendment nor equity in the taxing statute." it is submitted that there is no scope for interest under FERA 1973 by invoking equitable jurisdiction. The said submission overlooks the context in which the same has been said by the Hon'ble Supreme Court. In that case, in the context of considering the question of classification arising under the Central Excise Act, the Hon'ble Supreme Court has observed as follows:

"3. …….

> For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute."

The Honourable Supreme Court has laid down that while interpreting and construing a taxing statute equity has no role to play, here in this case no provision of FERA is being interpreted or construed. Therefore, in the considered view of

this Court, the said decision does not support the contentions of the second respondent.

29. In the case of H.H.LAKSHMI BAI AND ANOTHER ETC. Vs. COMMISSIONER OF WEALTH-TAX, ETC. reported in (AIR 1995 SC 140), in paragraph 9, it is observed as follows:

> "9. On the language of the proviso, as it is, there cannot be two answers, according to us also. It is settled law that taxation statute in particular has to be strictly construed and that there is no equity in a taxing provision……."

The said observation was made by the Hon'ble Supreme Court of India, while considering the question of exemption under clauses XV and XVI of Section 5(1-A) of the Wealth Tax Act and therefore, this decision also is not applicable to the facts of this case.

30. Relying upon the decision in the case of CENTRAL BUREAU OF INVESTIGATION Vs. STATE OF RAJASTHAN reported in (AIR 1996 SC 2402), the second respondent in the written submissions has submitted that FERA 1973 is a self contained code and it is a Special legislation and in the absence of specific provisions enabling the payment of interest on the refund, a claim for interest on the refund, cannot be entertained. In the said decision, while considering the applicability of Section 5 of the Criminal Procedure Code, the Hon'ble Supreme Court of India observed as follows:

> "22. …….
> But, FERA is a self-contained Code containing comprehensive provisions of investigation, inquiry and trial for the offences under that Act. The provisions under FERA gives power to the officers of the Directorate of Enforcement or other officers duly authorized by the Central Government under FERA to search, conspirate, recover, arrest, record statements of witnesses, etc. FERA contains provisions for trial of the offences under FERA and imposition of punishment for such offences. FERA, being a special law, containing provisions for investigation, enquiry, search, seizure, trial and imposition of punishment for such offences. FERA, being a special law, containing provisions for investigation, enquiry, search, seizure, trial and imposition of punishment for offences under FERA, Section 5 of the Code of criminal Procedure is not applicable in respect of offences under FERA."

This Court fails to understand as to how the above observation made by the Hon'ble Supreme Court of India is helpful to the second respondent. FERA 1973 may be a self-contained code, but that does not mean that this Court exercising the extraordinary jurisdiction under Article 226 of the Constitution of India, cannot pass equitable orders by applying the law laid down by the Hon'ble Supreme Court of India and Hon'ble Division Benches of this Court, if the facts and circumstances of a particular case warrant the passing of such equitable orders.

31. In the light of the law laid down by the above said Division Bench Judgments of this Court and the Hon'ble Apex Court, the absence of provision, however, cannot prevent a Court from exercising its jurisdiction in exercise of the powers under Art. 226 of the Constitution of India so as to do justice between the parties and make an order in equity. As the Court of Equity, the High Court, while exercising powers under Art. 226 of the Constitution of India, has to reach out to undo justice. There is no bar imposed upon the Courts for granting to a citizen interest on the amounts which have been wrongfully and without any authority of law withheld from the citizen.

32. The next question to be decided is from which date the petitioner is entitled to claim interest and at what percentage ?

33. The petitioner became entitled to claim refund only on and after the order dated 11.4.1997 passed by the Division Bench of this Court in C.M.A.Nos. 1210 and 1211 of 1993 since on and from 11.04.1997, the retention of the amount seized from the petitioner cannot be said to be either legal or permissible, but on the other hand it was wrongful and impermissible. Therefore, pursuant to the said order, when the petitioner made a demand for refund together with interest in his letter dated 15.7.1998 the second respondent ought to have refunded the amount but failed to do so. The retention of the amount before 11.04.1997 cannot be said to be wrongful as the proceedings pursuant to seizure were pending. The presumption of taintedness of the money seized could have continued during the pendency of the legal proceedings before various forums, including this Court, but that presumption could no longer continue after 11.04.1997 on which date the Honourable Division Bench passed the order in the CMAs. Therefore, in the considered view of this Court, the petitioner is entitled to claim interest only from 11.4.1997 viz. the date of order passed in the C.M.As and not from the date of the seizure of the amount or from the date of the deposit of the penalty amount.

34. Admittedly, the second respondent sent a letter dated 24.4.2002 to the petitioner enclosing the Refund Bill in Form No.41 for a sum of Rs.1,09,800/- being the amount due to the petitioner. By the said letter, the second respondent requested the petitioner to sign on the reverse side of the Bill against claimant's signature and sent back the Bill to him for arranging payment. But, admittedly, the petitioner did not send back the bill duly signed, but instead raised objections in respect of the interest payable on the refund amount. Nothing prevented the writ petitioner from sending back Form 41, the Refund Bill duly signed and agreeing to receive the sum of Rs.1,09,800/- under protest and reserving his right to claim interest on the said amount. But the petitioner failed to do so. Therefore, in the considered view of this Court on and from the date of receipt of the said letter dated 24.4.2002, which had been received by the petitioner on 27.4.2002, the withholding of the sum of Rs.1,09,800/- by the second respondent cannot be termed as wrongful. Only because of the refusal on the part of the writ petitioner to receive the said amount offered by the second respondent by returning the duly signed Form No.41, the said amount could not be refunded by the second respondent.

35. For the foregoing reasons, the petitioner is not entitled to claim interest after 27.4.2002 but is entitled for interest from 11.04.1997 to 27.4.2002 only. Taking into account the rate of interest payable on fixed deposits by Nationalised Banks and other Government Institutions, it is just and proper to fix the rate of interest at 9% per annum.

36. Accordingly, the second respondent is directed to refund the sum of Rs.1,09,800/- together with interest at 9% per annum for the period from 11.4.1997 to 27.4.2002, within four weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs. Consequently, connected WPMP is closed.

rpa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   Union of India, Ministry of Finance,
   Department of Revenue,
   New Delhi.

2. The Deputy Director of Enforcement,
   Enforcement Directorate,
   Shastri Bhavan, 26, Haddows Road,
   Chennai - 600 006.

mab (co)

dv/12.6.06

W.P. No.3718 of 2006