Supreme Court of India
Orient Paper Mills Ltd vs Union Of India on 25 February, 1966
Equivalent citations: 1966 AIR 1754, 1966 SCR (3) 657
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B. (Cj), Wanchoo, K.N., Hidayatullah, M., Shah, J.C., Sikri, S.M.

PETITIONER:
ORIENT PAPER MILLS LTD.

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT:
25/02/1966

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1966 AIR 1754 1966 SCR (3) 657

ACT:
Supreme Court Rules, 1950, Schedule III, Part 11, Entry 2-Claim for refund of a definite amount of excise duty-Disallowed by Excise authorities-Appeal to Supreme Court under Art. 136-Court fee payable.

HEADNOTE:
The appellant claimed refund of a specific amount as excess amount of excise duty recovered from it by assessing it under a wrong item, but the excise authorities rejected the claim and the appellant's revision application to the respondent was also dismissed. In its application for leave to appeal to this Court under Art. 136 , the appellant challenged the order of the respondent on the assumption that the order under appeal had been passed by the respondent acting as a Tribunal, and reiterated its claim for the specified amount. The appellant contended that only fixed court fee of Rs. 250 was payable because it was not possible to estimate at a money value the subject matter in dispute and not fee on an ad valorem basis at the rate prescribed in Entry 2 in Schedule 111, Part 11 of the

Supreme Court Rules.
HELD : The claim made by the appellant was for a definite, ascertained amount and therefore it is not a case where it is not possible to estimate at a money value the subject matter in dispute. Nor can it be said that if the appeal before this Court succeeds, it would still be necessary for the appellant to take any further steps to recover the amount of refund, because, this Court can direct the appropriate authorities to grant the refund. Therefore, the appellant should pay court fee as prescribed by Entry 2 in Part 11 of Schedule III of the Supreme Court Rules, on an ad valorem basis. [661 G-H; 662 E, F]
Order in Civil Appeal No. 212 of 1956, explained.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 659-664 of 1965.

Appeals by special leave from the judgment and order dated October 5, 1963 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi in Central Excise Revision Applications Nos. 720-725 of 1963. A. K. Sen, B. P. Maheshwari and M. S. Narasimhan, for the Appellant.

N. S. Bindra and B. R. G. K. Achar, for the respondent. The Judgment of the Court was delivered by Gajendragadkar, C. J. What is the appropriate amount of court-fees payable on the petition of appeal filed by the appellant, Orient Paper Mills Ltd., under Schedule III, Part II of the Supreme Court Rules, 1950, that is the short question of law which arises for our decision in this matter.

The appellant carries on the business of manufacturing and selling paper and paper board, and is registered as such under the 657 Central Excise and Salt Act, 1944 (No. I of 1944) (hereinafter called 'the Act'). The respondent, the Union of India, charges excise duty under Rule 9 of the Rules framed under the Act on the paper manufactured by the appellant before the manufactured goods are cleared out of the appellant's ware-house. Among various kinds of paper which the appellant manufactures and sells, are included 'Packing and Wrapping' and 'Printing and Writing Paper'. The aforesaid 'Printing and Writing Paper' is of various varieties and it includes Machine Glazed Poster popularly known as M.G. Posters.

Prior to the Finance Act of 1961, the printing and writing paper was classified and charged under item 17(3) of the Schedule to the Act and the wrapping paper was charged under item 17(4) of the Schedule; even so, the duty on both the items was the same, viz., 0 . 22 P. per kilogram. The duty under item 17(4) was, however, enhanced by the Finance Act of 1961 -and increased to 0 - 35 P. per kilogram from the 1st March, 1961. About six months after the enhanced duty came into force, the Excise authorities decided that the M.G. Poster manufactured by the appellant should be charged under item 17(4) and demand notices were issued accordingly for the different months during which the said paper was manufactured. In consequence of this demand, a total sum of Rs. 2,79,175-27 P.

was collected from the appellant as difference in the duty leviable for the assessment periods covered by the several appeals which are pending in this Court and with which we are concerned in the present proceedings.

As a result of these demands, the appellant had to pay the duty which it did under protest. Thereafter, it claimed a refund under Rule II of the Rules framed under the Act. This Rule prescribes a period of three months within which a claim for refund can be made "in consequence of the sum having been paid through inadvertance, error or misconstruction". The appellant urged that the duty on the goods in question was chargeable under item 17(3) and not under item 17(4) of the Tariff Rules. One of the reliefs claimed by the appellant in its petitions of appeal was that the Excise authorities be directed to assess the poster paper under item 17(3) and not under item 17(4) and to make a direction as to the refund of the excess amount recovered from the appellant. The excess amount of which refund was thus claimed came to Rs. 84,928-84 P. This application was rejected by the Assistant Collector of Central Excise, Cuttack Division, Cuttack.

Against the said decision, the appellant preferred an appeal to the Collector of Central Excise under s. 35 of the Act. In its appeal memo to the Collector, the appellant had claimed that the order under appeal should be revoked and Rs. 84,928-84 P. should be refunded to it. A further claim was made by the appellant that the excise authorities should be directed to assess the poster paper under item 17(3) and not under item 17(4). The said appeal was rejected by the Collector of Customs on 28-7-1962. The appellant then moved the respondent by way of revision under S. 36 of the Act. In its revision application, the appellant made prayers similar to those which it had made before the Appellate Authority. This revision application was also dismissed. It is against this revisional order that the appellant has come to this Court by special leave under Art. 136 of the Constitution. It appears that in the various paragraphs of its application for leave, the appellant has reiterated its claim for refund of money recovered from it in excess of the amount legitimately due from it and has challenged the order of the Excise authorities rejecting its claim in that behalf. On these facts, the question which arises is: can the appellant be permitted to pay a court-fee of Rs. 250 on its petitions for appeal, or is it necessary that it ought to pay court-fees at the rate prescribed by sub-clause (2) of entry 2 in Schedule III, Part II of the Supreme Court Rules? This question was referred by the Deputy Registrar of this Court to the Hon'ble Judge in Chambers. The learned Judge referred to the respective contentions raised before him by the parties and considered the practice in regard to the levy of court-fees in allied matters. He took the view that the practice with regard to levy of court-fees was in a state of flux and it required full consideration. That is why he directed that the matter be adjourned to Court. It is as a result of this direction made by the Hon'ble Judge in Chambers that this matter has come before us for disposal on the question of court-fees.

Let us cite the relevant provisions of the Supreme Court Rules in relation to court-fees in this matter. Enrty 2 in Part 11 of Schedule III reads thus:-

"Lodging and registering Petition of Appeal: Where the amount or value of the subject-matter in dispute is Rs.

20,000 or below that sum ..Rs. 250-00 For every Rs. 1,000 in excess of Rs. 5 . 00 for every Rs. 20,000 thousand rupees or part thereof.

In cases where it is not possible to estimate at a money value the subject-matter in dispute Rs. 250 . 00"

There is a proviso to this entry which reads thus: "Provided:

(1) that the maximum fee payable in any case shall not exceed Rs. 2,000 and (2) that where an appeal is brought by special leave granted by this Court credit shall be given to the appellant for the amount of court-fee paid by him on the petition for special leave to appeal".

Mr. Sen for the appellant contends that it is not possible to estimate at a money value the subject-matter in dispute in the present appeals; and so, court-fee of Rs. 250 would be adequate and appropriate for each one of them. According to him, the controversy between the parties has relation to the proper classification of the goods and this being the subject-matter of the appeals, it is incapable of valuation. Mr. Sen presented his argument in an alternative form. He urged that even if the appeals are allowed, this Court will merely determine the proper classification of the goods and make a declaration that on the basis of the said proper classification, the appellant should be entitled to the refund. Even after such a declaration is made, the appellant would be required to adopt some other procedure to make a claim for actual recovery of the said refund. It is on these two grounds that Mr. Sen rests his case that Rs. 250 would be the appropriate and adequate court-fees for each one of these appeals.

In support of this contention, Mr. Sen has also referred to the practice prevailing in this Court in respect of certain categories of appeals where court-fee of Rs. 250 has been consistently accepted as adequate and appropriate. In Civil Appeal No. 212 of 1956 (The State of Madras v. Messrs. Tata Iron and Steel Co. Ltd.) an appeal was filed by the State of Madras on a certificate granted by the High Court from an order passed by it under S. 12-B of the Madras General Sales Tax Act, 1939 allowing the assessee's claim for refund of the amount of sales tax computed on the turn-over of a stated sum of money. Overruling the stand taken by the office that court-fees should be paid on an ad valorem basis, Bhagwati, J. who was then the Hon'ble Judge in Chambers directed that "it is not possible to estimate the value of the claim in this case and the record does not show it. Therefore, the court-fee should be paid on that basis". Accordingly Rs. 250/- was accepted as proper court-fee. Similarly, in Civil Appeal No. 54 of 1958 (Indian Hume Pipes v. Its Workmen) though the appeal related to a definite and ascertainable sum of money in respect of payment of bonus, dearness allowance, etc. Bhagwati, J. directed that "I am inclined to think that Rs. 250/- fixed court-fee should be charged. , The award merely determines the liability; recovery of the dues requires other procedure to be adopted for the purpose; vide section 33(c)".

In accordance with the directions thus given by the Hon'ble Judge in Chambers in these two matters, the practice in this Court consistently has been that in matters coming to this Court in reference proceedings under the relevant provisions of the Sales Tax Acts and the Indian Income-tax Act, 1922 as well as against awards made under the Industrial Disputes Act, 1947, Rs. 250 has been

accepted as proper court-fee. In Civil Appeal No. 148 of 1954 (Mls. Bhatnagar & Co. Ltdv. Union of India), similar court-fee of Rs. 250/- was accepted where the appellant challenged the order of the High Court passed under Art. 226 refusing the appellant's prayer for a direction for amendment of the period of the validity of import licences. This plea was accepted even though the appellant had estimated his loss at Rs. 6,00,000/- if the relief claimed in that behalf by him was not granted. It is on these precedents and the practice which they show that Mr. Sen has relied in support of his argument that the category of' cases in which the present appeals fall should be similarly treated and Rs. 250/- should be taken as adequate and proper court-fee.

Reverting then to the first contention raised by Mr. Sen, can it be said that the present appeals fall in the class of cases where it is not possible to estimate at a money value the subject-matter in dispute. In our opinion, the answer to this question must clearly be in the negative. We have already set out the nature of the relief claimed by' the appellant in its application before the Assistant Collector of Central Excise, as well as in subsequent appeals and revision application. The claim clearly and unambiguously is for a refund of Rs. 84,928 . 84 P. It is true that a claim for this refund is sought to be justified on the basis that the assessment should be levied under item 17(3) and not under item 17(4); but the decision of the point as to which item applies to the paper in question, serves to support the appellant's claim for a refund; and so, the fact that the issue as to which item applies cannot be said to determine the character of the present proceedings before the Appellate Authority or that of the appeals before this Court. The proceedings, in terms, are to recover the stated amount of refund and since the said claim has been rejected by the Excise authorities, in the present appeals the same claim is made by the appellant before this Court. Therefore, we think it is impossible to hold that these appeals are cases where it is not possible to estimate at a money value the subject-matter in dispute. Besides, Mr. Sen is not right in contending that if the appeals. filed by the appellant before this Court succeed, it would be necessary for the appellant to take some further steps to recover the amount of refund claimed by it. In case this Court holds that the basis on which the assessment has been made in respect of the paper manufactured by the appellant is erroneous in law, the necessary consequence of the said decision would be to issue a direction that a refund of the appropriate amount should be allowed. These appeals have been brought to this Court under Art. 136 of the Constitution on the assumption that the orders under appeal have been passed by the respondent which acted as a Tribunal in entertaining the revision applications within the meaning of the said Article; and so, it would be open to this Court to direct, if the appeals succeed, that the appropriate authorities should grant the appellant's claim for refund.

Then as to the precedents on which Mr. Sen relies, the posi- tion with regard to appeals brought to this Court in Sales- tax or Income-tax matters, such as the case in the State of Madras v. Messrs. Tata Iron and Steel Co. Ltd.(1), is entirely different. In such proceedings, the High Court which entertains the reference ,acts purely in an advisory capacity and when the appeal is brought to this Court against the decision of the High Court on such reference, the capacity of this Court is exactly the same as that of the High Court. The proceedings continue to be proceedings in which either the High Court or this Court expresses an advisory opinion, and so, it can well be said that the subject-matter in such cases cannot be estimated at a money value. Whether or not similar considerations will apply to the appeals brought to this Court by special leave against awards made under the Industrial Disputes Act or against orders passed by the High Court in writ jurisdiction, it

is unnecessary for us to decide in the present proceedings. So far as the present appeals are concerned, we feel no difficulty in holding that the claim made by the appellant is for a definite, ascertained amount and it is the rejection of the said claim by the respondent in exercise of its revisional jurisdiction when it rejected the appellant's revision applications, that has given rise to the present appeals. This is a claim which in terms has already been estimated at a money value, and therefore, there is no basis for the appellant's plea that court-fee of Rs. 250/- should be held to be adequate and proper in each of these appeals. We accordingly ,direct that the appellant should pay proper court-fees as prescribed by Entry 2 in Part II of the Third Schedule of the Supreme Court Rules, subject, of course, to the maximum prescribed by clause (i) -of the proviso thereto.

(1) C.A. No. 212 of 1956.