

Supreme Court of India

Union Of India (Uoi) And Ors. vs E. Merck (India) on 8 December, 1994

Equivalent citations: 1998 (97) ELT 218 SC, JT 1998 (8) SC 431, (1998) 9 SCC 412

Bench: J Verma, S Bharucha

ORDER

1. The respondent-Company manufactures certain medicines for which it was liable to pay excise duty. There was a dispute about the rate at which excise duty was payable by it on its products. The dispute came to be resolved finally by an order of Customs, Excise and Gold (Control) Appellate Tribunal dated 22-4-1983 in favour of the respondent. The direction given by the Tribunal was to reassess the duty payable by the respondent on the correct basis indicated by the Tribunal. On reassessment of the respondent's liability being then made on that basis, refund of the excess duty paid by the respondent was made on 16-7-1984. The respondent then filed Writ Petition No. 5096 of 1984 in the Bombay High Court claiming Rs 9,34,255.85 as interest @ 18% p.a. on the excess amount of duty which was liable to be refunded. In the writ petition, the claim for payment of interest was based on the ground of wrongful retention of the excess amount by the Revenue, the retention being unlawful, illegal, mala fide and arbitrary. The High Court accepted the respondent's claim and allowed the writ petition issuing a writ of mandamus directing the Revenue to pay interest @ 12% on the amount of excess duty refunded to the respondent. The interest was directed to be paid for the period commencing on 21-1-1974 till payment. This appeal by special leave is filed by the Revenue against that order.

2. We have indicated the only basis on which the claim for payment of interest was made in the writ petition filed under Article 226 of the Constitution, and on which the writ of mandamus was issued by the High Court. The question, therefore, is whether there was a foundation laid in the writ petition for issuance of a writ of mandamus.

3. Admittedly, there is no statutory basis for the claim of interest made by the respondent in its writ petition inasmuch as there is no provision in the statute imposing an obligation on the Revenue to pay interest on the amount refunded. The respondent's claim for interest was also not based on any other statutory provision.

4. In short, there is no statutory or legal basis for making the claim of interest indicated in the writ petition to furnish a ground for issuance of a writ of mandamus. We may also add that the Tribunal's order did not by itself indicate the precise liability of the Revenue to refund any specific amount to the respondent so as to give rise thereby to a liability to refund any specified amount on the date of the Tribunal's order.

5. In other words, in the facts and circumstances of this case, there is no basis on which a legal obligation of the Revenue to refund a specific sum of money on a particular date is shown to have arisen to provide foundation necessary for issuance of a writ of mandamus. It is, therefore, unnecessary to examine in the present case the larger question urged on behalf of the respondent that the liability of payment of interest on the amount of excess duty refunded may, in a given case, give rise to a legal obligation providing foundation for issuance of a writ of mandamus to direct

payment of interest also on the amount refunded.

6. For the aforesaid reasons, the impugned judgment of the High Court is set aside. The appeal is, accordingly, allowed resulting in dismissal of the writ petition of the respondent. No costs.