

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5508 OF 2008
(Arising out of SLP(C) No. 1449 of 2008)

Union of India & Ors.

.... Appellants

Versus

Sterlite Industries (India) Ltd. & Anr.

.... Respondents

ORDER

1. Leave granted.
2. M/s. Sterlite Industries (India) Ltd. filed three refund claims dated 17th September, 2001 and 31st March, 2003 respectively under Rule 57AC(7) of Central Excise Rules, 1944.
3. In this civil appeal we are concerned with Assessment Years 2001-02 and 2002-03.
4. Suffice it to state that the Respondent herein had filed Special Civil Application No. 12251 of 2005 before the Gujarat High Court seeking refund. Vide order dated 12th August, 2005 the High Court directed the Department to refund the amount of Rs. 44,20,58,831/- with interest, "as may be admissible in law".
5. Pursuant to the High Court's order the Assistant Commissioner of Central Excise paid the refund amount by cheque. However with respect to interest, the question was examined and it was held that interest was not admissible. This order was not challenged by the respondent in appeal but the respondent moved the High Court again in Special Civil Application No. 18121 of 2006 seeking direction to the Department to pay

interest.

6. By the impugned judgment the High Court has allowed the Special Civil Application with a direction to the Department to pay interest on the refund allowed. Against the said order the Department has come to this Court by this civil appeal.

7. The above facts indicate that against the order passed by the Assistant Commissioner of Central Excise the respondent-assessee had not filed the statutory appeal against order denying interest but had moved the High Court directly by way of a writ petition.

8. This matter was argued for some time before us. Learned counsel Shri Lakshmi Kumaran, appearing on behalf of the respondents, on instructions, states that they would withdraw the Special Civil Application No. 18121 of 206 with liberty to file appeal before the Commissioner (Appeals) within a period of four weeks. Permission granted. Consequently, the impugned judgment and order is set aside and the respondent is given time to file Statutory Appeal before the Commissioner (Appeals) within four weeks. It is made clear that both sides would be entitled to take all legal contentions in this regard before the Appellate Authority. Learned Solicitor General states that if the appeal is filed within the stipulated period, the said appeal will be decided on merits and that the Department will not raise any objection with regard to limitation. We further make it clear that the Appellate Authority will decide the matter uninfluenced by the observations contained in the impugned judgment of the High Court as also those contained in its judgment dated 12th August, 2005 in Special Civil Application No. 12251/2005.

Subject to above, C.A. is dismissed as withdrawn.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi
September 03, 2008