

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5717 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE JAYANT PATEL

Sd/-

and

HONOURABLE MR.JUSTICE C.L. SONI

Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? | No |
| 5 | Whether it is to be circulated to the civil judge ? | No |
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SHANTI ENTERPRISE....Petitioner(s)

Versus

ASSISTANT COMMISSIONER OF INCOME TAX & 1....Respondent(s)

Appearance:

MR JP SHAH, SR. ADVOCATE with MR MANISH J SHAH, ADVOCATE for the Petitioner

MR SUDHIR M MEHTA, ADVOCATE for the Respondents

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CORAM: **HONOURABLE MR.JUSTICE JAYANT PATEL**
and
HONOURABLE MR.JUSTICE C.L. SONI

Date : 17/10/2014

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE C.L. SONI)

1. By this petition filed under Article 226 of the Constitution of

India, the petitioner has prayed to issue writ of certiorari or any other appropriate writ to quash and set aside the order of respondent No.2 – Commissioner of Income Tax-I at Annexure-L rejecting the revision petition filed by the petitioner under section 264 of the Income Tax Act, 1961 (“the Act” for short) on the ground that the petitioner had not made out sufficient cause for condonation of delay in filing the revision application; and has also prayed to quash the order levying penalty under section 271 (1)(c) of the Act at Annexure A, dated 12.3.2010, and has sought further direction against respondent No.1 to refund the penalty amount of Rs.1,13,32,499.00 with interest.

2. As per the facts stated in the petition, the petitioner filed his return of income declaring loss of Rs.4,63,776.00 for the Assessment Year 2005-06. The Assessing Officer completed assessment under section 143(3) of the Act on 31.12.2007 by making addition of Rs.3,01,58,459.00 on account of suppression of sales and Rs.8,11,000.00 on account of unproved sales return. The above said order of assessment was unsuccessfully challenged by the petitioner before the Commissioner of Income Tax (Appeals). The petitioner then filed appeal before the Income Tax Appellate Tribunal (“the Tribunal” for short). Pending the appeal before the Tribunal, the assessing officer imposed upon the petitioner penalty of Rs.1,13,32,499.00 by order dated 12.3.2010 under section 271(1)(c) of the Act on the ground of concealing particulars of income or furnishing inaccurate particulars of such income by the petitioner. The Tribunal allowed the appeal of the petitioner by order dated 22.2.2011. However, the amount of penalty was recovered from the petitioner by giving adjustment against the refund available to the petitioner of the tax paid for the F.Y. 2003-2004. The respondents then preferred appeal before this Court against the order of the Tribunal. This Court dismissed the said appeal by order dated 13.9.2012. The petitioner thus became entitled to refund of the penalty with interest. The petitioner through its Chartered Accountant

wrote many letters to refund the penalty. However, since no action was taken, the petitioner preferred revision application under section 264 of the Act against the order of penalty. The revision application came to be rejected on the ground of delay. The petitioner has contended that since the petitioner succeeded before the Tribunal against the order of assessment, by virtue of provisions of section 275(1A) of the Act, the respondents were required to delete the penalty and refund the amount of penalty.

3. The petition is opposed by affidavit in reply mainly stating that the petitioner had made request to cancel the penalty only on 3.8.2012 and by that time, more than six months had already lapsed after the order of the Tribunal and, therefore, no order cancelling penalty could have been made under section 275(1A) of the Act. It is further stated that the petitioner was though served with the order of penalty, still however, to cover up the lapse on the part of the petitioner of not preferring revision application within the time limit, the petitioner came out with false story of non service of the order of penalty. It is stated that the revision application under section 264 was required to be filed within one year from the date of communication of the order of penalty, however, same was filed after long delay for which no explanation was provided, therefore, there was no error in rejecting the revision application.

4. We have heard the learned advocates for the parties. Mr. J.P. Shah, learned Senior Advocate appearing with learned Advocate Mr. M.J. Shah for the petitioner submitted that the petitioner having succeeded before the Tribunal became entitled for refund of the penalty amount recovered from the it. Mr. Shah submitted that such obligation of refunding the amount of penalty flows from the provisions of section 275(1A) of the Act. Mr. Shah submitted that after the respondents lost before this court in the appeal preferred against the order of the Tribunal, it was expected of the respondents to make an order of cancelling the penalty and to refund the penalty amount

recovered as required by section 275(1A) of the Act even without making the claim for refund of penalty amount. Mr. Shah submitted that the law also makes the assessee entitled to refund of penalty as a result the order passed in favour of the assessee in the appeal or in any other proceedings under the Act and the assessee shall be entitled to interest on such amount to be refunded. Mr. Shah submitted that it was only when the request made by and on behalf of the petitioner for refund of penalty amount was not acceded to, the petitioner was constrained to file the revision application under section 264 of the Act against the order of penalty. Mr. Shah submitted that instead of doing justice to the petitioner by refunding the penalty by making necessary order under Section 275(1A) of the Act or cancelling the penalty by exercising powers under section 264 of the Act, the Commissioner rejected the revision application on the ground of delay. Mr. Shah submitted that the Commissioner ought to have entertained the revision application or exercised the other powers under the Act for refund of the penalty especially when the very base of imposing penalty upon the petitioner was removed by the order of the Tribunal and confirmed by the High Court. He, thus, urged to allow the petition.

5. Learned Advocate Mr. Sudhir M. Mehta appearing for the respondents submitted that the powers under section 275(1A) of the Act are not for the purpose of refund of penalty amount on account of subsequent orders passed in appeal of the assessee. Mr. Mehta submitted that even if the petitioner wanted the powers under section 275(1A) to be exercised for cancelling the penalty, the petitioner was required to move the concerned authority within the period of six months as provided in the said section. Mr. Mehta submitted that the refund of penalty amount is not automatic but timely action is required for getting the order of penalty cancelled which the petitioner did not take within the time prescribed under section 264 of the Act. Mr. Mehta submitted that the respondents

have stated in the affidavit in reply that the petitioner was duly served with the order of penalty and still the petitioner did not file any revision application within the time limit of one year and did not provide sufficient cause for delay. Mr. Mehta submitted that since the claim for refund of penalty was not made within the time limit, the petitioner even cannot claim interest on the amount of penalty. Mr. Mehta submitted that the petitioner did not file appeal against the order of penalty and present petition is to challenge the order passed in the revision application. Mr. Mehta submitted that since the Commissioner of Income Tax has found that no sufficient cause was made out by the petitioner for condoning delay in filing the revision application, this Court may not interfere with the discretionary order of Commissioner in exercise of the powers under Article 226 of the Constitution of India.

6. Having heard the learned advocates for the parties, it appears that there is no dispute about the fact that the order of penalty at annexure A dated 12.3.2010 was made against the petitioner on the basis of the assessment of income of the petitioner done by the assessing officer under section 143(3) of the Act. While completing the assessment, the assessing officer formed an opinion that the petitioner had concealed particulars of its income and on such ground, the assessing officer exercised powers under section 271(1) (c) of the Act imposing the penalty of Rs.1,13,32,499.00 upon the petitioner. This order was made when the appeal of the petitioner was pending before the Tribunal against the order of the assessing officer as confirmed by the Commissioner of Income Tax (Appeals). However, the Tribunal, vide its order dated 22.2.2011, allowed the appeal of the petitioner. The effect of such order passed by the Tribunal is of quashing the order of assessing officer of making addition in the income of the petitioner for Assessment Year 2005-2006.

7. We find that since the addition of the above said amount in the

income of the petitioner for the purpose of assessment was removed by the order of the Tribunal, the penalty imposed upon the petitioner under section 271 (1)(c) of the Act was required to be cancelled by making necessary order under Section 275(1A) of the Act and the amount of penalty recovered from the petitioner by adjustment was required to be refunded to the petitioner.

8. What is provided by Section 275(1A) is that the order imposing or enhancing or reducing or cancelling the penalty may be passed on the basis of the assessment as revised by giving effect to the order in appeal. The concerned authority was thus required to make specific order for cancelling the penalty by giving effect to the order in appeal made in favour of the petitioner. However, failure of assessing officer or concerned authority to pass such order would not mean that the assessee has no right of refund on his becoming successful in appeal against the order of assessment. Further, if there is failure to exercise power under Section 275(1A) within outer limit of six months, the assessee would be justified in approaching before this Court under Article 226 of the Constitution. In our view, word 'MAY' should be construed to create an obligation upon the authority to pass consequential order upon conclusion of the litigation.

9. Sub-section (1A) of Section 275 was inserted by Taxation Law (Amendment Act, 2006 with effect from 13.7.2006. The same reads as under:-

- (1-A) In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 26A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order

imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264:

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed-

- (a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard:
- (b) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner of the Commissioner or the order of revision under section 263 or section 264 is passed:

Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section."

10. Though time limit of six month is provided for the order contemplated to be passed of imposing, enhancing, reducing, cancelling penalty or dropping the proceedings for imposition of penalty for giving effect to any order passed in appeal, but when such order is to be passed in favour of the assessee, time limit for passing such order by the concerned officer should not come in the way of the assessee for cancelling the penalty on his getting success before the higher forum in appeal merely because the concerned officials failed to discharge his duty of giving effect to the order made in the appeal in favour of the assessee.

11. We find that when the petitioner had approached the Commissioner under Section 264 of the Act, seeking cancellation of penalty, instead of rejecting his revision application, on the ground of delay, the petitioner could have been given relief by making necessary order for cancelling penalty for giving effect to the order made in the appeal in his favour.

12. In above such view of the matter, we find that since the concerned authorities who were under obligation to pass necessary order for cancellation of penalty by giving effect to the order made in favour of the petitioner since failed in passing necessary order for cancelling of penalty and for refund of the penalty amount to the petitioner, the petitioner is justified in invoking the powers of this Court under Article 226 of the Constitution of India seeking direction to the respondents to refund the amount of penalty by giving effect to the order made in the appeal preferred by the petitioner and confirmed by this Court.

13. As regards claim of interest on the amount to be refunded, it appears that Section 244 of the Act provides for interest on refund where no claim is needed. Section 244 shall not apply in respect of any assessment for the Assessment Year commencing on 1st May, 1989 or any subsequent assessment orders. But then in the case like the present one, Section 244A of the Act would apply for interest on refunds. Section 244A reads as under:

“ 244A. Interest on refunds.

- (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:-
 - (a) Where the refund is out of any tax paid under section 115WJ or collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted.

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 115WE or sub-section (1) of section 143 or on regular assessment;

- (b) in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of tax or penalty to the date on which the refund is granted.

EXPLANATION.- For the purpose of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) * * *

(3) * * *

- (4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.

Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted.

14. Mr. Shah, learned Senior Advocate submitted that the claim of the petitioner for interest is only under section 244A(1)(b) of the Act.

15. In the case of *Sandvik Asia Ltd. Vs. Commissioner of Income Tax I, Pune and others* reported in (2006)2 SCC 508, the Hon'ble Supreme Court has held and observed in para 30,31,32 and 34 as under:-

30. In our view, the Act recognizes the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee.
31. At the initial stage of any proceedings under the Act any refund will depend on whether any tax has been paid by an assessee in excess of tax actually payable to him and it is for this reason that Section 237 of the Act is phrased in terms of tax paid in excess of amounts properly chargeable. It is, however, of importance to appreciate that Section 240 of the Act, which provides for refund by the Revenue on appeal etc., deals with all subsequent stages of proceedings and therefore is phrased in terms of 'any amount' becoming due to an assessee.

32. The Delhi High Court in Goodyear India Ltd. case (supra) held that an assessee is entitled to further interest under Section 244 of the Act on interest under Section 214 of the Act which had been withheld by the Revenue. The case of the Revenue was that interest payable to an assessee under Section 214 of the Act was not a refund as defined in Section 237 of the Act and hence no interest could be granted to the assessee under Section 244 of the Act. The Court held that for this purpose Section 240 of the Act was relevant which referred to refund of 'any amount becoming due to an assessee' and that the said phrase would include interest and hence the assessee was entitled to further interest on interest wrongfully withheld. It is also important to appreciate that the Delhi High Court also referred to the Gujarat High Court decision in D.J. Works case (supra) and read it as taking the same view. This supports the view of the appellant on the correct reading of the Gujarat decision.
34. In our opinion, the appellant is entitled to interest under Section 244 and/or Section 244A of the Act in accordance with the terms and provisions of the said sections. The interest previously granted to it has been computed up to 27-3-1981 and 31-3-1986 (under different sections of the Act) and it's present claim is for compensation for periods of delay after these dates.

16. In the case of *Union of India Through Director of Income Tax Vs. Tata Chemicals Limited* reported in (2014)6 SCC 335, the Hon'ble Supreme Court has held and observed in para 13 to 18, 23 to 27,30,36 and 37 as under:-

13. Section 156 of the Act talks about payment of tax, interest, penalty, fine or any other sum payable in consequence of any order passed under the Act on service of notice of demand issued by the assessing officer to the assessee specifying the said amounts.
14. Section 195(1) casts an obligation upon every person in this Country to deduct tax at the prevailing rates from out of any sum which is remitted to a non resident/Foreign Company. Sub Section (2) of Section 195 provides that where a person responsible for paying any such sum chargeable under the Act to a non resident/Foreign Company considers that the whole of such sum would not be the income chargeable in the case of recipient, he may make an application to the assessing officer/income tax officer to determine, by general or special order, the appropriate proportion of such sum so chargeable. The assessing officer is expected to determine such sum/tax which are deductible out of remittance to be sent to the recipient and only after deduction and payment of such sum/tax, the balance amount is to be remitted to the

non-resident. We clarify here that it is the statutory obligation of the person responsible for paying such sum to deduct tax thereon before making payment, if such application is not filed.

15. Section 240 of the Act provides for refund on appeal etc. The Section envisages that if an amount becomes due to the assessee by virtue of an order passed in appeal, reference, revision, rectification or amendment proceedings, the assessing officer is bound to refund the amount to the assessee without the assessee being required to make any claim in that behalf. The expression 'other proceedings under the Act' used in Section 240 of the Act, are wide enough to include any order passed in proceedings other than the appeals under the Act.
16. Section 244 of the Act provides for interest on refunds where no claim is made or required to be made by the assessee. The said section envisages that where a refund is due to the assessee in pursuance of an order passed under Section 240 of the Act, and the assessing officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessee a simple interest of 15% per annum on the amount of refund due from the date immediately following the expiry of the period of three months as aforesaid to the date on which the refund is granted.
17. Since there was disconcert in the minds of both the assessee and the Revenue regarding the cases where payment of interest was required to be made to the assessee by the Revenue, the Parliament has thought it fit to insert a new Section 244A in the place of Sections 214, 243 and 244 in respect of assessments for the assessment year 1989-90 and onwards. The Section is extracted:

"244A. Interest on refunds.

 - (1)
 - (a)
 - (b)
 - (2)
 - (3)
 - (4)
18. The objects and reasons for introduction of the aforesaid Section is clarified by the Board in its Circular No. 549, dated 31.10.1989. Relevant paragraphs of which are as under:

"11.2 Insertion of a new section 244A in lieu of sections

214, 243 and 244,- Under the provisions of section 214, interest was payable to the assessess on any excess advance tax paid by him in a financial year from the 1st day of April next following the said financial year to the date of regular assessment. In case the refund was not granted within three months from the date of the month in which the regular assessment was completed, section 243 provided for further payment of interest. Under section 244, interest was payable to the assessee for delay in payment of refund as a result of an order passed in appeal, etc., from the date following after the expiry of three months from the end of the month in which such order was passed to the date on which refund was granted. The rate of interest under all the three sections was 15 per cent annum.

- 11.3. These provisions, apart from being complicated left certain gaps for which interest was not paid by the Department to the assessee for money remaining with the Government. To remove this inequity, as also to simplify the provisions in this regard, the Amending Act, 1987, has inserted a new Section 244A in the Income Tax Act, applicable from the assessment year 1989-90 and onwards which contains all the provisions for payment of interest by the Department for delay in the grant of refunds. The rate of interest has been increased from the earlier 15 per cent annum to 1.5% per month or part of a month, comprised in the period of delay in the grant of refund. The Amending Act, 1987, has also amended sections 214, 243 and 244 to provide that the provisions of these sections shall not apply to the assessment year 1989-90 or any subsequent assessment years."
23. It is also well settled principle that the courts must interpret the provisions of the Statute upon ascertaining the object of the legislation through the medium or authoritative forms in which it is expressed. It is well settled that the Court should, while interpreting the provisions of the Statute, assign its ordinary meaning.
24. This Court in *Shyam Sunder vs. Ram Kumar* (2001) 8 SCC 24 has observed that in relation to beneficent construction, the basic rules of interpretation are not to be applied where (i) the result would be re- legislation of a provision by addition, substitution or alteration of words and violence would be done to the spirit of legislation, (ii) where the words of a Provision are capable of being given only one meaning and (iii) where there is no ambiguity in a provision, however, the Court may apply the rule of beneficent construction in order to advance the object of the Act.

25. Before the insertion of Section 244A as a composite Section by the Direct Tax Laws (Amendment) Act, 1987, the liability to pay interest on refund of pre-paid taxes was contained in Sections 214, 243 read with Section 244 (1A) of the Act. The Parliament has introduced a new Section in the place of Sections 214, 243 and 244 in respect of assessment for the assessment year 1989-90 and onwards.
26. The language of the Section is precise, clear and unambiguous. Sub-Section (1) of Section 244A speaks of interest on refund of the amounts due to an assessee under the Act. The assessee is entitled for the said amount of refund with interest thereon as calculated in accordance with clause (a) & (b) of sub- Section (1) of Section 244A. In calculating the interest payable, the section provides for different dates from which the interest is to be calculated.
27. Clause(a) of sub-Section(1) of Section 244A talks of payment of interest on the amount of tax paid under Section 155WJ, tax collected at source under section 206C, taxes paid by way of advance tax, taxes treated as paid under Section 199 during the financial year immediately preceding the assessment year. Under this clause, the interest shall be payable for the period starting from the first day of the assessment year to the date of the grant of refund. No interest is payable if the excess payment is less than 10% of the tax determined under Section 143(1) of the Act or on regular assessment. Clause(b) of Sub-Section(1) of Section 244A opens with the words "in any other case" that means in any case other than the amounts 2 paid under Clause(a) of Sub-section(1) of Section 244A. Under this clause, the rate of interest is to be calculated at the rate of one and a half per cent per month or a part of a month comprised in the period or the periods from the date or, as the case may be, either the dates of payment of the tax or the penalty to the date on which the refund is granted. An explanation is appended to clause(b) of the aforesaid sub- Section to explain the meaning of the expression "date of payment of tax or penalty". It clarifies that the "date of payment of tax or penalty" would mean the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.
30. The refund becomes due when tax deducted at source, advance tax paid, self assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund. No interest is, however, payable if the excess payment is less than 10 percent of tax determined under Section 143(1) or on regular assessment.

No interest is payable for the period for which the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (wholly or partly). The rate of interest and entitlement to interest on excess tax are determined by the statutory provisions of the Act. Interest payment is a statutory obligation and non-discretionary in nature to the assessee. In tune with the aforesaid general principle, Section 244A is drafted and enacted. The language employed in Section 244A of the Act is clear and plain. It grants substantive right of interest and is not procedural. The principles for grant of interest are the same as under the provisions of Section 244 applicable to assessments before 01.04.1989, albeit with clarity of application as contained in Section 244A.

36. Section 240 of the Act provides for refund of any amount that becomes due to an assessee as a result of an order in appeal or any other proceedings under the Act. The phrase "other proceedings under the Act" is of wide amplitude. This Court has observed, that, the other proceedings under the Act would include orders passed under Section 154 (rectification proceedings), orders passed by the High Court or Supreme Court under Section 260 (in reference), or order passed by the Commissioner in revision applications under Section 263 or in an application under Section 273A.
37. A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/ deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/ deductor who has deducted tax at source and deposited the same before remitting the amount payable to a nonresident/ foreign company.

17. In light of the above principles of law and for the reasons sated above, the petition is allowed. The respondents are directed to refund the penalty amount of Rs.1,13,32,499.00 to the petitioner within a period of two months from the date of receipt of this order with interest on such amount of penalty as per the provisions of section 244(A)(1)(b) of the Act. Rule is made absolute to the above said extent. No order as to costs.

**Sd/-
(JAYANT PATEL, J.)**

**Sd/-
(C.L.SONI, J.)**

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