



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12299 OF 2024

Ramkaran Karwa,  
Age 85 years, having his residence  
at Flat No.74, Blue Haven,  
Mount Pleasant Road, Malabar Hill,  
Mumbai – 400 006

...Petitioner

Versus

1. Union of India,  
Through the Secretary,  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi – 110 001
2. The Commissioner, CGST & CX,  
Palghar, having his office at 5<sup>th</sup> Floor,  
Plot No.C-24, Utpad Shulk Bhavan  
Sector-E, Bandra-Kurla Complex,  
Bandra East, Mumbai – 400 051
3. The Assistant Commissioner,  
CGST & CX, Palghar Division-III  
having his office at 3<sup>rd</sup> Floor,  
Central GST Bhavan, Plot No.P-94,  
Takinaka, Boisar, West,  
Maharashtra – 401 504.
4. The Additional Director General,  
Directorate General of GST  
Intelligence, Mumbai Zonal Unit,  
having his office at NTC House,  
3<sup>rd</sup> Floor, 15, N M Road,  
Ballard Estate, Mumbai – 400 001.

...Respondents

WITH

WRIT PETITION (STAMP) NO.26523 OF 2024

Samir Karwa,  
Age 56 years, having his residence at

A-1002, 10<sup>th</sup> Floor, A Wing, Lodha World View,  
Senapati Bapat Marg, Lower Parel,  
Mumbai – 400 013.

...Petitioner

**Versus**

1. Union of India,  
Through the Secretary,  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi – 110 001
2. The Commissioner, CGST & CX,  
Palghar, having his office at 5<sup>th</sup> Floor,  
Plot No.C-24, Utpad Shulk Bhavan  
Sector-E, Bandra-Kurla Complex,  
Bandra East, Mumbai – 400 051
3. The Assistant Commissioner,  
CGST & CX, Palghar Division-III  
having his office at 3<sup>rd</sup> Floor,  
Central GST Bhavan, Plot No.P-94,  
Takinaka, Boisar, West,  
Maharashtra – 401 504.
4. The Additional Director General,  
Directorate General of GST  
Intelligence, Mumbai Zonal Unit,  
having his office at NTC House,  
3<sup>rd</sup> Floor, 15, N M Road,  
Ballard Estate, Mumbai – 400 001.

...Respondents

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Mr. Jas Sanghavi i/b. PDS Legal for Petitioner in both petitions.

Mr. Abhishek Mishra for Respondent No.1 to 3.

Mr. Jitendra B. Mishra a/w Ms. Sangeeta Yadav, Mr. Ashutosh Mishra  
and Mr. Rupesh Dubey for Respondent No.4.

Mr. Shubh Agarwal, Deputy Director, Directorate General of GST  
Intelligence, Mumbai Zonal present.

Mr. Harpreet Singh, AGM Punjab & Sind Bank present.

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**CORAM :** K. R. SHRIRAM &  
JITENDRA JAIN, JJ.

**DATED :** 20<sup>th</sup> SEPTEMBER 2024

**JUDGMENT :- (Per Jitendra Jain, J.)**

1. Rule. By consent of the parties heard finally since the pleadings were completed.
2. Writ Petition (Stamp) No.26523 of 2024 not on board, but by consent of the parties is taken up for hearing alongwith the present writ petition since the issue involved is common. However, in the present order, facts relating to Writ Petition No.12299 of 2024 are narrated for sake of convenience.
3. By this petition under Article 226 of the Constitution of India, Petitioner is seeking for quashing of Order-in-Original (O-I-O) dated 5<sup>th</sup> July 2024 whereby Respondents have granted interest @ 6% per annum on the amount refunded to Petitioner by rejecting the claim of Petitioner to grant interest @18% per annum.

**Brief undisputed and admitted facts are as under:**

4. On 29<sup>th</sup> August 2011, an investigation was initiated by Respondent No.4 against one Perfect Containers Pvt. Ltd. In the course of the investigation, Petitioner's residence premises were searched and a sum of Rs.2,06,33,000/- was seized on the allegation that same constitutes unaccounted receipts arising out of sales made by Perfect Containers Pvt. Ltd. In the course of said investigation Rs.15,94,000/- was also seized from the residence of Petitioner's son. The aggregate

cash seized was Rs.2,22,27,008/-. The seized amount was deposited by Respondent No.4 in fixed deposit with Punjab & Sind Bank.

5. On 19<sup>th</sup> May 2016, O-I-O was passed against Perfect Containers Pvt. Ltd., Petitioner and others whereby it was held that cash seized was towards sale proceeds of clandestinely removed goods and therefore the said cash was liable for confiscation. Penalty of Rs.21,25,199/- under Rule 26 of the Central Excise Rules was also imposed on Petitioner. Against the said O-I-O Petitioner and Respondents filed cross-appeals before Commissioner of Central Excise (Appeals).

6. On 31<sup>st</sup> March 2017, the first appellate authority set aside the order of confiscation of cash seized and penalty imposed on Petitioner. The said order was challenged by Respondents by filing an appeal with the Tribunal. The Tribunal, vide its order dated 18<sup>th</sup> October 2023, upheld the first appellate authority's order of setting aside the confiscation of cash seized and penalty imposed on Petitioner. The said order of the Tribunal has attained finality. However, inspite of the order of both the appellate authorities being in favour of Petitioner and inspite of there being no stay on any of the appellate order and inspite of Petitioner's request for refund vide various letters, Petitioner was not granted refund of the cash seized of Rs.2,06,33,000/-. So also

Petitioner's son was not given refund of Rs.15,94,000/-. Petitioner's son has filed a separate writ petition being Writ Petition (Stamp) No.26523 of 2024.

7. On 21<sup>st</sup> May 2018, Respondent No.4 refused to grant the refund on the ground that the matter is pending before the Tribunal. The refusal was challenged by filing an appeal with the Commissioner GST & CX (Appeals) who, vide order dated 23<sup>rd</sup> January 2019, directed Respondents to process the claim of refund since there was no stay on the appellate order.

8. Meanwhile, on 2<sup>nd</sup> May 2019 Respondent No.4 informed Respondent Nos. 2 and 3 that the seized currency was placed in fixed deposit with Punjab & Sind Bank. The said fact is also recorded in the impugned order dated 5<sup>th</sup> July 2024 and in the Affidavit in Reply of Respondent Nos. 1 to 3 affirmed by Manjula Arulselvan on 9<sup>th</sup> September 2023.

9. On 26<sup>th</sup> December 2023, 22<sup>nd</sup> February 2024 and 10<sup>th</sup> April 2024, Petitioner requested for refund of Rs.2,06,33,000/- along with interest @18% per annum.

10. Since Respondents were not granting refund of cash seized a Miscellaneous Application was filed before the Tribunal praying for refund of cash seized along with interest @18% per annum. Pending

the Miscellaneous Application, impugned O-I-O dated 5<sup>th</sup> July 2024 came to be passed ordering return of seized cash of Rs.2,06,33,000/- along with interest @6% from the date of fixed deposit, i.e. 30<sup>th</sup> August 2011 till the date of refund. The rate of 6% interest was granted on the basis of Circular No.984/08/2014 dated 16<sup>th</sup> September 2014 and the relevant extract of the said Circular reproduced in the impugned O-I-O states that in case appeal is decided in favour of assessee he shall be entitled to refund of amount deposited @6% per annum from the date of making the deposit to the date of refund in terms of section 35FF of the Central Excise Act, 1944 or section 129EE of the Customs Act. Petitioner, thereafter, filed a letter dated 29<sup>th</sup> July 2024 with the Tribunal informing that Respondents have granted refund along with interest @6% and therefore do not wish to pursue the Miscellaneous Application. However, in the said letter it was stated that Petitioner is aggrieved by rate of 6% per annum and will pursue the remedies available in law for redressal of the same. The interest worked out by Respondents @6% per annum from the date of fixed deposit till the grant of refund was Rs.1,59,83,313/-.

**11.** It is on the aforesaid backdrop that the present petition is filed challenging the grant of interest only @6% per annum and praying for interest to be granted @18% per annum.

**Submissions of Petitioner:**

12. Petitioner submitted that Circular No.984 dated 16<sup>th</sup> September 2014 relied upon in impugned O-I-O is applicable only to pre-deposits made under section 35FF of the Central Excise Act and section 129EE of the Customs Act and not to the return of cash seized in the course of the investigation. Petitioner further submitted that the Circular is dated 16<sup>th</sup> September 2024 whereas the cash was seized on 29<sup>th</sup> August 2011 and therefore the said Circular is not applicable. Petitioner submitted that Respondents were not justified in not refunding the cash seized although there was no stay on the appellate order which was in favour of Petitioner. Petitioner submitted that they are entitled to 18% per annum being the commercial rate of interest on the amount of refund of cash seized. Alternatively, Petitioner submitted that admittedly Respondents have earned interest at the rate of more than 6% whereas they have granted interest only at the rate of 6%, thereby unjustly enriching by the differential rate of interest and therefore Petitioner is entitled to the entire interest earned on the fixed deposit from the bank.

**Submissions of Respondent Nos. 1, 2, 3 and 4:**

13. Respondents have supported the impugned O-I-O by relying upon Circular No.684 dated 16<sup>th</sup> September 2014 whereby rate of interest prescribed is 6% per annum. Respondents have further

submitted that there was no delay in refunding the cash seized since they were pursuing appellate remedies by filing appeal. Therefore, Writ Petition be dismissed. Other than these submissions, Respondents have not made any further submissions.

**Analysis:**

14. The short issue which arises in the present petition is whether Respondents are justified in granting interest @6% per annum on the refund of cash seized although the said cash seized was deposited in fixed deposit and earned interest at more than 6% per annum.

15. The whole basis of Respondents justification for grant of interest @6% per annum is based on Circular No.984 dated 16<sup>th</sup> September 2014 which reads as under:

Circular No 984/08/2014-CX

F. No. 390/Budget/1/2012-JC  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Excise & Customs)

New Delhi, dated the 16<sup>th</sup> September, 2014 //

To,

1. All Chief Commissioners, Central Excise and Service Tax/ Customs.
2. All Commissioners of Central Excise, Service Tax/ Customs.
3. Chief Commissioner (AR), CESTAT, New Delhi.
5. All Commissioners of Central Excise, Service Tax and Customs
6. All Commissioners (AR), New Delhi, Mumbai, Chennai, Kolkata, Bangalore & Ahmadabad
7. Webmaster



**Sub: Amendments to the Appeal provisions in Customs, Central Excise and Service Tax made by Finance Act, 2014- Issue of clarifications - reg.**

Sir / Madam,

The Finance Act (No.2), 2014 has been enacted on 06.08.2014. Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 have been substituted with new sections to prescribe mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute. Where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed.

1.2 The amended provisions apply to appeals filed after 6<sup>th</sup> August, 2014. Sections 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 contain specific saving clause to state that all pending appeals/stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile provisions.

1.3 Section 35FF of the Central Excise Act, 1944 and Section 129EE of the Customs Act, 1962 have also been substituted to provide for payment of refund along with interest at the prescribed rate on the amount pre-deposited from the date of such payment till the date of refund. In exercise of the powers conferred under the new Section 35FF of the Central Excise Act, 1944 and Section 129EE of the Customs Act, Notification Nos 24/2014-CE(NT) and 70/2014-Cus(NT), both dated 12.08.2014 have been issued specifying six percent as rate of interest on refunds made under those sections.

1.4 Various doubts / issues have been raised by trade bodies, industry associations and field formations etc. on the implementation of the new provisions. With a view to implement the scheme smoothly, the following clarifications are issued.

**2. Quantum of pre-deposit in terms of Section 35F of Central Excise Act, 1944 and Section 129E of the Customs Act, 1962:**

2.1 Doubts have been expressed with regard to the amount to be deposited in terms of the amended provisions while filing appeal against the order of Commissioner (Appeals) before the CESTAT. Sub-section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeal). It is, therefore, clarified that in the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal). This need not be the same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.

2.2 In a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.

2.3 In case of any short payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed is liable for rejection.

**3. Payment made during investigation:**

3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35 F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.

3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.

3.3 In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed by the appellant is liable for rejection.

#### **4. Recovery of the Amounts during the Pendency of Appeal:**

4.1 Vide Circular No.967/1/2013 dated 1<sup>st</sup> January, 2013, Board has issued detailed instructions with regard to recovery of the amounts due to the Government during the pendency of stay applications or appeals with the appellate authority. This Circular would not apply to cases where appeal is filed after the enactment of the amended Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.

4.2 No coercive measures for the recovery of balance amount i.e., the amount in excess of 7.5% or 10% deposited in terms of Section 35F of Central Excise Act, 1944 or Section 129E of Customs Act, 1962, shall be taken during the pendency of appeal where the party / assessee shows to the jurisdictional authorities:

- (i) proof of payment of stipulated amount as pre-deposit of 7.5% / 10%, subject to a limit of Rs.10 crores, as the case may be; and
- (ii) the copy of appeal memo filed with the appellate authority.

4.3 Recovery action, if any, can be initiated only after the disposal of the case by the Commissioner (Appeal) / Tribunal in favour of the Department. For example, if the Tribunal decides a case in favour of the Department, recovery action for the amount over and above the amount deposited under the provisions of Section 35F / 129E may be initiated unless the order of the Tribunal is stayed by the High Court/Supreme court. The recovery, in such cases, would include the interest, at the specified rate, from the date duty became payable, till the date of payment.

#### **5. Refund of pre-deposit:**

5.1 Where the appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.

5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.

5.3 If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.

5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.



5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

5.6. It is reiterated that refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 *supra*.

## 6. Procedure and Manner of making the pre-deposits:

6.1 E-payment facility can be made use of by the appellants, wherever possible.

6.2 A self attested copy of the document showing satisfactory proof of payment shall be submitted before the appellate authority as proof of payment made in terms of Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.

6.3 Column 7 of EA.1, column 6 of CA.1 and column 6 of ST.4 for filing appeal before Commissioner (Appeals), seek details of the duty/penalty deposited. The same may be used for indicating the deposits made under amended Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962.

6.4 The appeal filed before the CESTAT are filed along with the appeal memo in prescribed format (Form EA-3 for Central Excise Appeals and Form CA-3 for the Customs Appeals). Column 14(i) of the said appeal forms seeks information of payment of duty, fine, penalty, interest along with proof of payment (challan). These columns

may, therefore, be used for the purpose of indicating the amount of deposit made, which shall be verified by the appellate authority before registering the appeal.

6.5 As per existing instructions, a copy of the appeal memo along with proof of deposit made shall be filed with the jurisdictional officers.

## 7. Procedure for refund:

7.1 A simple letter from the person who has made such deposit, requesting for return of the said amount, along with a self attested Xerox copy of the order in appeal or the CESTAT order consequent to which the deposit becomes returnable and attested Xerox copy of the document evidencing payment of such deposit, addressed to Jurisdictional Assistant/Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund of the amount deposited along with interest at the rate specified.

7.2 Record of deposits made under Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 should be maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority.

## 8. Amendment to Preamble of Orders:

8.1 In order to make the new provisions known to the assessee / trade every adjudicating authority lower in rank to the Commissioner is directed to incorporate the following sentence in the Preamble to the order being issued by them -

"An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute."

8.2 The following may be added in the preamble of the orders issued by the Commissioner (Appeals) -

"An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8.3 The following may be added in the preamble of the orders issued by the Commissioner as original adjudicating authority -

"An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

9. Receipt of the Circular may please be acknowledged.

10. Hindi version follows.

(Sunil K. Sinha )  
Director (Judicial Cell)

16. In our view, the aforesaid Circular is not applicable to the case of Petitioner since, admittedly, the cash seized was during investigation proceedings against the company of which Petitioner was a Director. The said cash seized was not an amount deposited by Petitioner as pre-deposit for filing an appeal under the Central Excise Act. Affidavit of Respondent Nos.1 to 3 in paragraph 3 have admitted that this is not a case of interest on delayed refund of amount deposited under section 35FF of the Central Excise Act. In our view, on the basis of this admission and on a reading of Circular 984 of 2014, the contention raised by Respondents to justify interest @6% per annum is erroneous. The said Circular was issued in the light of amendments made to section 35F of the Central Excise Act and 129E of the Customs Act whereby these sections were substituted by section 35FF and section 129EE, respectively, providing for certain percentage of the demand to be paid as a condition precedent for entertaining the appeal. It is also important to note that in the present case cash was seized on 29<sup>th</sup> August 2011 and therefore appropriation of cash seized during investigation towards any pre-deposit as a condition for filing an appeal also cannot arise. Therefore, the contention raised by Respondents to justify the impugned O-I-O on this count is to be rejected.

17. We may also observe that Petitioner has not brought to our notice any provision to justify claim of interest @18% per annum and

therefore such a claim cannot be granted to Petitioner. However, Petitioner's alternative submission on grant of interest at the actual rate which the fixed deposit has earned is certainly required to be considered.

**18.** Admittedly and undisputedly, the cash seized from Petitioner was placed in fixed deposit with Punjab & Sind Bank. The said admission can be found in paragraph 15 of the impugned O-I-O dated 5<sup>th</sup> July 2024. The letter dated 4<sup>th</sup> September 2024 issued by Punjab & Sind Bank to the Deputy Director, DGGI also admits that the fixed deposits made from the cash seized earned rate of interest in the range of 9.6% per annum to more than 6% per annum. The said letter also records the actual interest paid to Respondents, on cash seized from Petitioner and his son, amounting to Rs.2,22,77,008/-.

**19.** The character of cash seized by Respondents from Petitioner in the course of investigation against the company of which Petitioner was a Director is in the nature of amount held in trust by Respondents till the determination of final liability, if any, and it is only after the said finalization and appropriation that the sum can be said to be belonging to Respondents as recovery of tax dues. Till the point of finalisation of tax dues Respondents continued to hold the cash seized in trust for and on behalf of Petitioner. In the present case it is undisputed that at no

point of time the cash seized was appropriated towards final tax dues and rightly so because the order discharging Petitioner of tax dues had attained finality. It is settled position that a trustee cannot enrich himself on behalf of the person for whom the money is held in trust. A trustee is supposed to account for each and every sum of money which is held in trust on behalf of the beneficiary. In the instant case, therefore, action of Respondents in granting interest @6% per annum when the fixed deposits arising out of cash seized from Petitioner have earned more than 6% per annum cannot be justified and Respondents are duty bound to handover the entire amount of interest which they have earned.

**20.** In our view, attempt of Respondents to retain interest earned at the rate of more than 6% and to grant interest @6% to Petitioner would amount to unjust enrichment and trading in interest by Respondents which is not permissible under any law nor has any such provision been shown to us by Respondents. In our view, it may amount misappropriation.

**21.** Respondent No.4 in its Affidavit affirmed on 9<sup>th</sup> September 2024 by one Shubh Agarwal has annexed letter dated 4<sup>th</sup> September 2024 issued by Punjab & Sind Bank giving calculation of total interest paid on fixed deposits arising out of cash seized from Petitioner and his son. Petitioner submitted that on a perusal of the said interest

calculation statement and more particularly for the period 4<sup>th</sup> January 2021 to 3<sup>rd</sup> March 2022 the interest earned is shown only Rs.5,98,217/- whereas in the immediately preceding year the interest earned was Rs.25,04,477/- and although the rate of interest has gone down from 6.61% to 5.45%, the interest for the period 2021-22 cannot be Rs.5,98,217/-. Similarly, for the period 3<sup>rd</sup> January 2013 to 3<sup>rd</sup> January 2014, interest @9% is worked out to Rs.23,44,222/- whereas at the same rate of interest for the immediately subsequent year the interest earned is shown at Rs.20,53,017/-. The difference of Rs.2,91,205/- is also not explained. Petitioner submitted and rightly so that the discrepancies in this statement have not been explained by Respondents. In our view, Petitioner is justified in making this submission since Respondents ought to have taken same care in verifying the interest amount which they would have otherwise exercised if it would have been their own money. This we say so because it is settled position that a trustee has to take same care of the property which he would care while exercising caution with respect to his own property. We may also note that Petitioner in its rejoinder, pursuant to the working enclosed in the reply of the Respondents, has given a chart showing the amount due and payable after working out interest at the rate earned on fixed deposit receipts as evident from letter of Punjab & Sind Bank dated 4<sup>th</sup> March 2024. The said working

has not been disputed by Respondents. The said working is made by taking cash seized from Petitioner of Rs.2,06,33,000/- and Rs.15,94,000/- from his son aggregating to Rs.2,22,27,000/-. Based on the said calculation and after giving credit of payment received by Petitioner and his son on 25<sup>th</sup> July 2024 and 14<sup>th</sup> August 2024, sum of Rs.97,03,728/- is due and payable by Respondents to Petitioner and his son. Since the said working has not been disputed by Respondents, the alternative prayer made by Petitioner for grant of interest actually earned and after factoring the discrepancies which Respondents have neglected, in our view Petitioner is entitled to sum of Rs.90,07,829/-. The balance sum of Rs. 6,95,899/- is attributable to cash seized from Petitioner's son. The aggregate of the said two sums is Rs.97,03,728/-.

**22.** Respondents have made a fixed deposit of Rs.50,63,062/- on 14<sup>th</sup> August 2024 for a period of one year. In our view, there is no justification for making the said fixed deposit and, therefore, Respondents should foreclose the said fixed deposit and pay over the amount alongwith interest to Petitioner.

**23.** We may observe that if the aforesaid two amounts are not returned within a period of four weeks from the date of uploading the order then Respondents would be liable to pay interest @6% per annum on the said two amounts till the actual date of refund. The rate of 6% is not based on the Circular No.984 of 2014 but we have arrived at this



rate based on the fixed deposit made by Respondents on 14<sup>th</sup> August 2024 for a period of one year on which the interest yield is 6.45%.

24. Before parting, we may observe that as per letter dated 4<sup>th</sup> September 2024 issued by Punjab & Sind Bank giving working of interest, it is observed that for the period 4<sup>th</sup> January 2021 to 25<sup>th</sup> April 2024, there is no interest earned on the fixed deposits. On a submission made by Petitioner pointing to the said aspect and on a query raised by the Court, Respondents after consulting the Bank stated that there were regulations governing banking system whereby auto-renewal gets inactivated after a period of 10 years and therefore no interest is shown to have been earned on the fixed deposit. We fail to understand as to whether this aspect was brought to the notice of Respondents by Punjab & Sind Bank, and if yes, why the fixed deposits were not renewed post expiry of 10 years. If Punjab & Sind Bank has not informed Respondents about the said aspect, then we fail to understand as to under what legal right Punjab & Sind Bank retained the amount after the expiry of 10 years and earned interest by lending in their business of banking. Admittedly Petitioner cannot be faulted on account of this and Respondents have while granting interest, has granted interest for the period post the expiry of 10 years and Petitioner in his calculation has also reduced the same for arriving at the final claim. In our view, an inquiry should be initiated by Respondents to ascertain the

accountability on this aspect and fix the responsibility by taking appropriate action against the persons found negligent for non-renewal of the fixed deposits.

25. In view of above, we pass the following order:

**ORDER**

- (i) Impugned O-I-O dated 5<sup>th</sup> July 2024, Exhibit A to the petition is quashed and set aside.
- (ii) Petitioner is not entitled to interest @18% per annum. However, is entitled to sum of Rs. 90,07,829/- being the interest in excess of 6% earned on fixed deposits arising out of cash seized from Petitioner.
- (iii) Respondents are directed to refund a sum of Rs. 90,07,829/- within a period of four weeks from the date of uploading the present order to Petitioner and if the same is not paid within four weeks then Petitioner would be entitled to interest @6% per annum from the expiry of four weeks from the date of actual refund.
- (iv) Respondents are directed to foreclose the fixed deposit made on 14<sup>th</sup> August 2024 amounting Rs.50,63,062/- and return the same to Petitioner's account alongwith interest actually received on the said fixed deposit from Punjab and Sind Bank. The said amount should be

returned within a period of four weeks from the date of uploading the present order. If the same is not returned within the aforesaid period of four weeks then Petitioner would be entitled to interest @6% per annum from the date of expiry of four weeks till the date of actual refund.

- (v) Concerned Commissioner GST and CX is directed to initiate inquiry and fix the accountability and responsibility for non-renewal of fixed deposits after the expiry of 10 years and take appropriate action against the persons who are involved in the said negligence including recovery of the interest from the salary/retirement benefits of the person found responsible.

26. Writ Petition No.12299 of 2024 disposed.

27. Rule is made absolute in above terms.

**WRIT PETITION (STAMP) NO.26523 of 2024:-**

### **ORDER**

- (i) Impugned O-I-O dated 5<sup>th</sup> July 2024, Exhibit A to the petition is quashed and set aside.
- (ii) Petitioner is not entitled to interest @18% per annum. However, is entitled to sum of Rs.6,95,899/- being the

interest in excess of 6% earned on fixed deposits arising out of cash seized from Petitioner.

- (iii) Respondents are directed to refund a sum of Rs.6,95,899/- within a period of four weeks from the date of uploading the present order to Petitioner and if the same is not paid within four weeks then Petitioner would be entitled to interest @ 6% per annum from the expiry of four weeks from the date of actual refund.
- (iv) Concerned Commissioner GST and CX is directed to initiate inquiry and fix the accountability and responsibility for non-renewal of fixed deposits after the expiry of 10 years and take appropriate action against the persons who are involved in the said negligence including recovery of the interest from the salary/retirement benefits of the person found responsible.

28. Writ Petition (Stamp) No.26523 of 2024 disposed.

29. Rule is made absolute in above terms.

[JITENDRA JAIN, J.]

[K. R. SHRIRAM, J.]