GOVERNMENT OF MAHARASHTRA

No.MIS 2006/CR-92/EXC-4,
Home Department,
Mantralaya,Mumbai-400 032.
Dated the ~~April 2006.~~
9th May' 2006

<u>Order passed by Principal Secretary (Transport & State Excise) pursuant to directions of Hon.High Court in Writ Petition No.1704/2006 filed by Maharashtra Wholesale Wine Merchants' Association V/s. Superintendent of State Excise.</u>

Hon'ble High Court in Writ Petition No.1704/2006 passed an order on 16th March 2006, wherein the Government of Maharashtra, through its Principal Secretary (Transport & State Excise), was directed to give a hearing to the petitioners in the said petition. This hearing was given to them. The case in brief is that Government in the year 1998 decided to give the pay scale as per the Fifth Pay Commission with effect from 1.1.1996. In this regard, a G.R. was issued by the Govt. on 5th September 2000, wherein for the first time a decision was taken to recover the expenses on increase in pay scale from the licensee, i.e., members of the petitioner in the Writ Petition. Pursuant to this G.R., Excise Superintendents / Collectors issued demand notices for the difference in the pay and allowances along with the interest calculated from 1.1.1996 onwards. Against this decision of the Government, the petitioners went to the Hon'ble High Court and the Hon'ble High Court gave stay to this decision. The Govt. appealed to the Hon'ble Supreme Court against this decision of the High Court. Hon'ble Supreme Court in SLP No.1302/2003 vide its order, dated 1.3.2003, upheld the contention of the Govt. regarding recovery of difference in pay and allowances (supervision charges). However, the issue of interest was not addressed.

The contention of the petitioner is that since these supervision charges and interest thereon pertain to the period prior to the date of demand, therefore, they are not liable to pay the interest as they are not in a position to recover the same from the clients at this late stage. According to them the supervision charges form part of the manufacturing cost and as per the State Excise policy, they are allowed to recover the same. If at this late stage they are asked to pay supervision charges and interest thereupon, they will not be able to recover the same as part of manufacturing cost. The second contention is that notwithstanding this they have paid the supervision charges as and when demanded. They cannot be penalised if demand is raised late for recovery with retrospective effect. In any case they have paid the supervision charges and are now contending only the payment of interest.

3. The Commissioner of State Excise in his letter No.FLR 112000/3454/5B, dated the 18.2.2006, has sent a proposal more or less on the similar lines. It is well established that interest cannot be claimed from a date prior to the date of raising demand even though the amount pertained to earlier period. Therefore, after hearing the petitioners and their Advocate and the representatives of the Commissioner of State Excise, it is decided that the interest on the quantum of the difference in the unpaid supervision charges shall be payble only from 10.3.2003 or the dates on which demand was actually raised by concened Superintendents of State Excise / Collectors whichever is later. If any interest is recovered contrary to this, the same will be counted towards payment of principle amount or further supervision charges recoverable in future.

(G.S.GILL)
Principal Secretary to the Government of Maharashtra,
Home Department (Transport & State Excise).

To

The Maharashtra Wholesale Wine Merchants' Association, Shop No.1,
Sanmukh Apartment, Follower Lane Chowk, Kalyan Ambernath Road,
Ulhasnagar-421 003. –

Tha Commissioner of State Excise, Maharashtra State, Mumbai.

The Superintendent of State Excise, Thane.