(2006) 07 AHC CK 0089

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1449 of 2004

Ashok Kumar — APPELLANT

Vs

The State of U.P. and The Collector/District Excise Officer — RESPONDENT

Date of Decision : 04-07-2006

Acts Referred:
Uttar Pradesh Excise Act, 1910 — Section 11(2), 38A

Citation : (2006) 4 AWC 3682

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Neeraj Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Neeraj Sharma, Advocate on behalf of petitioner and learned Standing Counsel on behalf of respondents.

2. The petitioner participated in the excise auction in respect of Group Excise Shops of District Mau for the Excise Year 1992-93. It is stated that a sum of Rs. 9,35,000/- (Rupees nine lac thirty five thousand only) were illegally forfeited under order of the Collector, Mau dated 30th March, 1992. Feeling aggrieved by such forfeiture order of the Collector, Mau, the petitioner filed a writ petition before the Hon''ble High Court being Civil Misc. Writ Petition No. 951 (Tax) of 1992. This Court allowed the writ petition, by means of the judgment and order dated 29th November, 1994 and the order of forfeiture was quashed. The Excise Commissioner, U.P. Lucknow was directed to consider the application for refund of the forfeited amount, if an application is made within six months from the date of the order (A copy of the judgment and order of this Court dated 29th November, 1994 has been enclosed as Annexure-2 to the writ petition). The operative portion of the said judgment and order of this Court reads as follows:

Even otherwise we feel that if the matter was postponed by the authorities for auction already held on 12th March, 1992, if the respondents have to accept his bid then it was incumbent upon the authorities to inform the petitioner, in case, there is any default in furnishing of the security for a bid having been accepted on the said date. Thus even on merit we found respondents'' averments not sustainable. Accordingly, the present recovery proceedings against the petitioner is not sustainable and we quash the recovery certificates dated 20.10.1992 (Annexures 30 to 23 of the writ petition) and also impugned order dated 30th March, 1992 passed by the respondents 3 and 5, which is annexures 8 and 9 of the writ petition.

Learned counsel for the petitioners further urged the refund of the amount, which is pending before the respondent No. 2 in case, the petitioners make an application for refund of the amount deposited for the said auction, within six weeks from the date a certified copy of this order is filed along with aforesaid application, the authority will pass appropriate order after ascertaining the amount in deposit.

With these observations this writ petition is allowed with costs.

Dt/- 28.11.1994 Sd/- A.P. Misra Sd/- P. N. Nag

3. The petitioner, accordingly, made an application for refund of the forfeited amount. The application was allowed by the Additional Excise Commissioner vide order dated 14th November, 1995 and it was directed that sum of Rs. 9,35,000/- (Rupees nine lac thirty five thousand only) be refunded to the applicant. The operative portion of the said order of the Additional Excise Commissioner reads as follows:

Manniye Uchch Nyayalaya, Allahabad ke adeshanushar ish dhanrashi ki vapsi avedakgano ko ki jani hai. Manniye Uchch Nyayalaya, Allahabad ke adesh Civil Misch Writ Petition San. 951 of 1992 ke antargat avedakon ko kiya jana apekshit hai. Deposit ki dhanrashi Rupaya 9,35,000/- (Nau Lakh Paintish Haiar rupaye) ki vapsi avedakon ko kar diva jaye.

Ha./ Apathaniy

14.11.95 (D.K. Govil) Apar Abkari Ayukt (Licensing avam Audyogik Vikas) Uttar Pradesh

4. Despite the order so passed by the Additional Excise Commissioner, the money in fact was not returned to the petitioner for nearly four years and it was only on 14th September, 1999 that the money in fact was re-paid to the petitioner.

5. It may be recorded that the Division Bench Judgment of this Court dated 28th November, 1994 had been challenged before the Hon''ble Supreme Court of India, by means of SLP being Special Leave to Appeal (Civil) No. (s) 13395 of 1995 State of U.P. and Ors. v. Ashok Kumar and Ors.. The SLP filed by the Department has also been dismissed by the Hon''ble Supreme Court of India vide judgment and order dated 14th July, 1995. Consequently the judgment of Hon''ble High Court become final between the parties.

6. On the refund made to the petitioner, after the gap of nearly four years from the date of the order of refund, the petitioner made an application to the Excise Commissioner for payment of interest on delayed re-payment for the period the money was illegally retained. The application so filed by the petitioner has been rejected under order of the Additional Excise Commissioner, U.P. (Licensing and Industrial Development), Allahabad (respondent No. 3), vide order dated 5th August, 2003. Feeling aggrieved by the said order of the Additional Excise Commissioner the petitioner filed revision u/s 11 (2) of the U.P. Excise Act, before the State Government through Excise Secretary, Lucknow. The revision so filed by the petitioner has also been dismissed by the State Government, vide order dated 2nd September, 2004. It is against these two orders dated 5th August, 2003 and dated 2nd September, 2004 passed by the Excise Additional Commissioner and State Government respectively that the present writ petition has been filed.

7. The petitioner seeks payment of interest at the rate of 18% for the period the sum of Rs. 9,35,000/- (Rupees nine lac thirty five thousand only) was illegally retained by the State-authorities.

8. On behalf of the respondents a counter affidavit has been filed and in the counter affidavit except for referring to the various stages of the litigation, no relevant other facts has been mentioned for nonpayment of interest on the delayed refund of money to the petitioner.

9. Learned Counsel for the department states that there is no provisions under the U.P. Excise Act for payment of interest on the refund of money to the person concerned by the Excise Department and therefore, the payment of interest is legally not justified. It has been further stated that the provisions of penal interest u/s 38-A of the U.P. Excise Act are attracted only when some money is payable to the Government by the licensee or a person concerned in respect of excise revenue. This provision is not applicable in the facts of the present case where the Government has to refund the money to the individual person concerned and therefore, the petitioner cannot claim interest on the basis of such provisions.

10. I have heard learned Counsel for the parties and have gone through the records of the present writ petition.

11. It is no doubt true that under the U.P. Excise Act there is no provisions for payment of interest by the Government on the dalyed refund of money to the licensee or other such individual person under the order of this Court or otherwise. It is further true that u/s 38-A of the U.P. Excise Act, payment of penal interest has been provided only where the licensee or other person concerned has delayed the payment of excise dues to the Government.

12. However, payment of interest has been held to be a normal assertion on capital and not a penalty or punishment.

13. The Division Bench of this Court in the case of R.P. Sharma v. State of U.P. and Ors. passed in Civil Misc. Writ Petition No. 1027 of 1999 vide judgment and order dated 12th February, 2004 has specifically held as follows:

We may mention that we are passing the direction for interest since interest is the normal accretion on capital.

Often there is a misconception about interest. Interest is not a penalty or punishment at all.

For instance, if A had to pay a certain sum of money to B at a particular time, but he pays it after delay of several years, the result will be that the money remained with A and he would have earned interest thereon by investing it some where. Had he paid that amount at the time when it was payable then B would have invested it somewhere and earned interest thereon. Hence if a person has illegally retained some amount of money then he should ordinarily be directed to pay not only the principal amount but also the interest earned thereon,

Money doubles every six years (because of compound interest). Rs. Hundred in the year 1990 would become Rs, Two hundred in the year 1996 and it will become Rs. 400 in the year 2002. Hence if A had to pay B a sum of rupees 100 in the year 1990 and he pays that amount only in the year 2002, the result will be that A has pocketed Rs. 300 with himself. This clearly cannot be justified because has he paid that amount to B in the year 1990 B would be having Rs. 400 in the year 2002 instead of having only Rs. 100. Hence ordinarily interest should always be awarded whenever any amount is detained by someone, otherwise the person receiving the amount after considerable delay would be losing the entire interest thereon, which will be pocketed by the person who managed the delay. It is for this reason that we have ordered for payment of interest along with the amount realised as licence fee.

14. In view of the aforesaid Division Bench Judgement of this Court, it cannot be disputed that the State Government had illegally retained the money which belonged to the petitioner from the date of the order of the Additional Excise Commissioner dated 14th November, 1995. The date of repayment i.e. actual payment is 14th September, 1999. Therefore, for this period between 14th November, 1995 to 14th September, 1999 the respondent-State is liable to pay interest on the amount so withheld. The order of the Additional Excise Commissioner dated 5th August, 2003 and the order of the State Government having not considered the aforesaid legal aspect of the matter, cannot be legally sustained. The same are hereby quashed.

15. It is, accordingly directed that the Excise Commissioner (respondent No. 2) shall ensure the payment of interest at the rate of 10% per annum from the date of the order of the Additional Excise Commissioner i.e. 14th November, 1995 till the date of actual payment i.e. 14th September, 1999, within two months from the date a certified copy of this order is filed before the Excise Commissioner.

16. The writ petition is allowed accordingly.

