(2003) 05 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (T) No. 5832 of 2002

G.B. Engineers — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 09-05-2003

Acts Referred:

Bihar Finance Act, 1981 — Section 43
Constitution of India, 1950 — Article 226

Citation : (2003) 2 BLJR 1643 : (2003) 3 JCR 450

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : M.S. Mittal, for the Appellant; Mahesh Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. Heard both sides.

2. The prayer in this writ petition is for the issue of a writ of mandamus, directing the respondents to issue refund vouchers for the balance amount'' of tax deducted at source by the principals of the petitioner, a works contractor, and deposited with the Commercial Taxes Department, in terms of the order passed by this Court on 15.10.2001 in WP (T) No. 4039 of 2001 and also for a writ of mandamus, directing the respondents to grant statutory interest on the money so refunded and to be refunded in terms of the order passed by this Court earlier.

3. According to the petitioner, when the orders of assessment for the assessment years 1994-95 to 1999-2000 were issued to the petitioner, demands were made, ignoring the taxes deducted at source by the principals of the writ petitioner. It was in that context that the writ petitioner approached this Court with CWJC No. 4039 of 2001. By judgment dated 15.10.2001, this Court, taking note of the fair stand adopted by the Advocate General that the respondents shall take appropriate decision regarding the amount to be refunded and refund the amount within two months from the date of that judgment directed the payment.

Their Lordships also observed that the petitioner was entitled to statutory interest on the said amount as permissible in law. According to the petitioner, pursuant to this Court''s order, refund vouchers were issued covering only the principal amount. Even then, the amounts were not actually being paid by the treasury. It was in that context that the present writ petition was filed.

4. It is seen from the counter affidavit that the refund vouchers were issued to the petitioner on 30.4.2002 but thereafter there was delay in the treasury in honouring the refund vouchers and the amounts were paid to the assessee only on 10.10.2002 after the filing of the writ petition.

5. It is now submitted that the refund vouchers have been honoured and the amounts paid. According to counsel for the petitioner, the amounts refunded did not include the interest payable u/s 43 of the Bihar Finance Act, Counsel points out that in the earlier judgment also this Court had directed that interest as permissible by statute is payable. According to counsel, though the assessments were completed long ago, the refund was actually made only on 10.10.2002 and in that situation, interest was payable at 9% per annuam as provided u/s 43 of the Act. Learned counsel for the Government submitted that pursuant to the order of this Court in the earlier writ petition, final demand notices were issued on 6.2.2002 adjusting the taxes deducted at source and showing the amount available for refund. The assessee had applied for refund only on 8.2.2002. Refund vouchers have been issued on 30.4.2002, well within six months of 8.2.2002, the date of demand for refund. Counsel, therefore, submitted that in terms of Section 43 of the Act, no interest was payable since the refund was made within six months of making the application for refund.

6. It could not be shown on behalf of the assessee that a demand for refund was in fact made prior to 8.2.2002. Of course, learned counsel for the assessee submitted that the concerned documents in that behalf had been produced along with W.P. (T) No. 4039 of 2001 and the file of that writ petition may be called for. On going through the present writ petition we cannot say that in terms of Section 43 of the Bihar Finance Act, there was a demand for refund though not of the exact amount, at any point of time prior to 8.2.2002. In that situation, though it may be somewhat harsh on the assessee, the fact remains that interest could not be ordered to be paid on the basis of Section 43 of the Bihar Finance Act.

7. But we find another aspect arising in this case. In the prior judgment WP (T) No. 4039 of 2001 rendered on 15.10.2001, this Court directed that the amount be calculated and refunded within two months from the date of that judgment. There was delay in calculating the amount and the amount was determined only on 6.2.2002. Even then, there was no immediate refund of the amount as directed by this Court. The petitioner had to make yet another formal application for refund and only thereafter, by 30.4.2002, the refund vouchers were issued. It is also disclosed that the amount was actually paid to the assessee only after the present writ petition was filed on 10.10.2002. It is, therefore, clear that there was a delay in paying the amount as ordered by this Court, which should have

been said by 15.12.2001. In these circumstances, notwithstanding the fact that the petitioner might not have been entitled to interest for the refund, u/s 43 of the Bihar Finance Act of its strict construction, we are of the view that the petitioner ought to be awarded some interest for the period subsequent to 15.12.2001 until the filing of the present writ petition. This is for the reason that the refund vouchers were actually encashed or honoured only thereafter. We are, therefore, satisfied to award interest to the assessee from 15.12.2001 the date fixed by this Court for refund till the amount was actually refunded. In the circumstances, we think that interest at 6% per annum should be made payable to the assessee for the period from 15.12.2001 to 10.10.2002, for the amount* that was actually refunded to the assessee. The interest thus payable will be calculated and paid to the assessee by the respondents within two months from this date.

8. This writ petition is allowed in this manner.

