(2004) 03 PAT CK 0087

In the Patna High Court

Case No : C.W.J.C. No. 7727 of 1991

Hari Nagar Sugar Mills Ltd. APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Citation : (2005) 272 ITR 480 : (2004) 3 PLJR 356

Hon'ble Judges : S. Nayer Hussain, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Y.V. Giri, Jyoti Saran and A.K. Srivastava, for the Appellant; B.N. Singh and Ram Priya Sharan Singh, for the Respondent

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner has filed the present writ application for quashing the order dated March 18, 1991, passed by the respondent-Deputy Commissioner, Commercial Taxes, Government of Bihar, Patna, rejecting the prayer of the petitioner for payment of interest with regard to Rs. 2 lakhs, which was deposited by the petitioner towards advance tax, in respect of the agricultural Income Tax (Rs. 82,000 on March 28, 1979, and Rs. 1,18,000 on March 30, 1979).

3. It is an admitted position that the Bihar Agricultural Income Tax Act was repealed with effect from March 1, 1979, and, thus, liability to pay tax under the said Act came to an end. However, the petitioner deposited the aforesaid amount. Later on, according to its own assertion, the petitioner took legal advice and found that it was not liable to deposit the said amount and, accordingly, it prayed for refund of the amount before the authority concerned, which was refunded to the petitioner on August 11, 1988, pursuant to the order dated June 6, 1998, as contained in annexure 2. Thereafter, the petitioner filed an application for payment of interest for keeping the aforesaid amount, which prayer has been rejected by the impugned order as contained in annexure 6.

4. The case of the petitioner is that as the amount was deposited on the oral direction made by the authority of the Department, it is entitled to interest on the said amount.

5. The stand of the State, on the other hand, is that there was no demand of advance tax made on behalf of the State and on its own volition the petitioner deposited the said amount, which has been refunded to him and as such it is not entitled to payment of any interest.

6. The only question for consideration is as to whether the petitioner is entitled to any interest on the amount, which remained with the State Government for such period.

7. If the amount has been deposited in terms of the statutory provision then in a case of refund under the Act itself provision has been made for refund of the amount with interest. Admittedly, in this case, when the Act was repealed, the amount was deposited and as such the said deposit was not made under the provisions of the Act. The question for consideration is as to whether the petitioner is entitled to interest only on the ground that the amount deposited remained with the State Government. If the claim for refund was not considered by the authority in the year 1980, then the petitioner should have approached this court earlier and had it approached this court earlier, the matter would have been different, but it waited for seven long years and, thereafter, the amount was refunded.

8. Taking into consideration the said conduct of the petitioner and in the facts and circumstances, we are of the view that in this case instead of allowing an interest at a particular percentage, a lump sum amount of Rs. 50,000 should be paid to the petitioner towards interest so as to bring an old matter to an end.

9. Accordingly, this writ application is disposed of with a direction to the authorities concerned of the Department to make payment of Rs. 50,000 to the petitioner within a period of six months from today.

