(2000) 07 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3227 of 2000

Hindustan Copper Limited APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2001) 2 RLW 908 : (2001) 4 WLC 201 : (2001) 1 WLN 495

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : A.K. Bhandari, for the Appellant;

Judgement

Misra, J.—The petitioner Hindustan Copper Limited has filed this writ petition claiming interest on the amount refunded to it which had been deducted towards excise duty but was later held to be a wrongful deduction by the Division Bench of this Court in D.B.C.W. Petition No. 1669/84 which was allowed in favour of the petitioner. The respondents herein had preferred an appeal before the Supreme Court by filing a SLP which also was dismissed and thus the order passed by the Division Bench was upheld by the Apex Court also. The petitioner thereafter filed a petition for contempt before the Division Bench for compliance of its order which was finally dropped with a direction to the respondents to refund the amount which had been realised from them towards excise duty but the prayer of the petitioner claiming interest on the amount of refund was not entertained by the Division Bench. However, an observation was made that it is open for the petitioner to proceed in accordance with law in the matter of claim of interest on the delayed payment. This is how this writ petition has been filed relying on the aforesaid observation of the Division Bench contending that liberty was granted to the petitioner to claim interest by way of a fresh writ petition.

(2). Having heard the counsel for the petitioner at some length at the admission stage itself, it is more than obvious that the claim of interest on the amount of refund on the excise duly is clearly a consequential claim arising out of the demand of refund which had been adjudicated by the Division Bench and cannot be treated as a fresh cause of action so as to entertain it by way of a fresh writ petition as it would be clearly barred by the principle of constructive res-judicata which envisages that any dispute between the same parties in regard to the same cause of action which could have been raised or ought to have been raised in one and the same proceeding cannot be entertained by way of a fresh writ petition. The dispute which had been raised before the Division Bench in this case was, as to whether the excise duty could have been realised from the petitioner and that having been decided in favour of the petitioner. the question of interest was also required to be raised and decided in the same writ petition when the claim of refund has been made and a fresh writ petition would be clearly barred since the petitioner was duty bound to raise it at the initial stage as it was a point which properly belonged to the ambit of refund of the amount of excise duty and the claim of interest ought to have been brought forward with due diligence by the petitioner not during the contempt proceedings but at the threshold before the Division Bench of the Supreme Court. The Division Bench had merely observed and granted liberty to the petitioner to. raise the question of interest in accordance with law. But this cannot be interpreted so as to mean that a fresh writ petition can be permitted to be filed claiming interest on the amount refunded which had earlier been adjudicated by the Division Bench and upheld by the Supreme Court which did not consider it proper to give any observation granting interest on the amount of refund. Hence this writ petition is dismissed on the ground of maintainability as having become barred by the principle of constructive res-judicata.