
(2005) 08 JH CK 0053

In the Jharkhand High Court

Case No : Writ Petition (T) No. 3039 of 2005

Hindustan Engineering Products Co.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Bihar Finance Act, 1981 — Section 17, 19, 27, 42, 43

Citation : (2005) 4 JCR 270 : (2007) 8 VST 203

Hon'ble Judges : Altamas Kabir, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : M.S. Mittal, for the Appellant; P. Modi, for the Respondent

Judgement

Altamas Kabir, C.J.—The petitioner is a partnership firm represented by one of its partners, Sri Shyam Sundar Agarwal and having its business premises in Ghatshila. The petitioner's business is registered under the Bihar Finance Act, 1981.

2. The petitioner appears to have filed an appeal against the assessment orders passed by the Commercial Taxes Officer, Singhbhum Circle, for the assessment years 1993-94 and 1994-95 before the Joint Commissioner of Commercial Taxes (Appeals) after completing all the statutory requirements for preferring an appeal, including payment of 20 per cent of tax assessed in terms of Section 45(3) of the Bihar Finance Act, 1981 (for the assessment year 1993-94, Rs. 45,254/-; and Rs. 1,88,624/- for the assessment year 1994-95).

3. The said appeals were ultimately allowed by the Joint Commissioner of Commercial Taxes (Appeals), Singhbhum Circle, Jamshedpur, on 23rd March, 2002 and 28th February, 2004, for the two assessment years. On receipt, of the orders passed in the two appeals and the demand note from the Commercial Taxes Department for the period in dispute, the petitioner applied for the refund of the appeal fee deposited with the Commercial Taxes Department, Singhbhum Circle, Jamshedpur, on 5th November, 2003 and 6th July, 2004, respectively. It is

the petitioner's case that till date of filing of the writ application, no action was taken by the concerned authority for grant of refund of the amount paid by way of appeal fee, which amounted to unjust enrichment on the part of the Commercial Taxes Department, Singbhum Circle, Jamshedpur.

4. Appearing in support of the writ application, Mr. Mittal urged that the Government is not entitled to withhold any amount which is legally due to the petitioner and that not only is the petitioner entitled to refund of the amount deposited by it for the purpose of Section 45(3) of the aforesaid Act, but also to interest thereupon as provided under the said Act. Mr. Mittal submitted that frivolous objections had been taken by the Department to refund the excess amount of sales tax realised from the petitioner together with interest thereon @ 9% per annum, as per the provisions of Sections 42 and 43 of the Bihar Finance Act, 1981. Mr. Mittal submitted that Section 43 makes provision for payment of interest on the amounts which are refundable if the same were not refunded within six months from the date of receipt of application in that behalf from the dealer or the person concerned.

5. Mr. Mittal urged that having regard to the aforesaid provisions, the Department could not deny to the petitioner the amount of interest as claimed along with the refundable amount. In support of his submissions, Mr. Mittal referred to various orders passed by this Court from time to time in different matters, where directions have been given to refund the excess amount of tax paid together with interest.

6. Mr. Mittal submitted that since the Department had withheld the payment of what was ultimately due to the petitioner, it must be penalized to the extent of paying interest as provided u/s 43 of the above Act.

7. In support of his submissions, Mr. Mittal firstly referred to the decision of the Andhra Pradesh High Court in the case of SLS Textiles Limited v. Commercial Taxes Officer-II, Chittoor 2005 (140) STC 251, wherein it was held that when a refund becomes due as a result of any order passed in appeal or other proceedings under the Sales Tax Act, there was no need to file an application separately for claiming refund.

8. The next case referred to by Mr. Mittal was that of this High Court dated 14.1.2004 in WP (T) No. 5007 of 2003, reported in I.T.W. Signode India Ltd. (II) v. State of Jharkhand and Ors. 2004 (2) JCR 212. In the said decision, it was sought to be indicated that refund of tax is to be made within six months of the statutory period fixed by the Statute from the date of the application. The last case on which reliance was placed by Mr. Mittal was also of this High Court in the case of Abreast Engineering Company v. State of Jharkhand and Ors. 2003 (3) JCR 110, wherein a similar view was taken.

9. Mr. Mittal urged that having regard to the aforesaid decision, the Revenue Department could not have taken an obstructive view to refund the amount which had been deposited as a condition precedent for filing of the appeals for

the aforesaid two assessment years.

10. Opposing the writ application, Mr. Modi contended that the petitioner was not entitled to any interest whatsoever, since he had not made an application for refund as required u/s 42 of the Bihar Finance Act, 1981. Mr. Modi contended that upon an application being made for refund of any amount under the Act, if such amount was not refunded within six months from the date of receipt of such application, then and then only, the amount would carry interest at the rate of 9% with effect from the date of expiry of six months from the date of receipt of such application. Mr. Modi pointed out that in the instant case, no application had been made by the petitioner firm within the period as prescribed u/s 42 of the aforesaid Act and that in most of the orders referred to by Mr. Mittal, orders were made on the basis of the application filed for refund of the excess amount of tax paid.

11. Mr. Modi submitted that what had been paid towards appeal fee had already been refunded to the partnership firm, but in the absence of an application made within the time prescribed, the petitioner firm was no longer entitled to ask for interest on the said amount. Mr. Mittal, however, conceded that it was for the Court to decide whether such interest was payable, and if so, for which period.

12. We have given serious thought to the submissions made on behalf of the respective parties having particular regard to the provisions of Sections 42, 43 and 45 of the Bihar Finance Act, 1981, which are reproduced below :

"42. Refunds.--The prescribed authority shall in the prescribed manner, refund any amount paid by a dealer in excess of the amount finally determined as being payable by him under this part. The refund shall be allowed by adjustment of such excess towards the amount payable by the dealer for any other period or by cash payment or both :

Provided that no claim for such refund shall be entertained unless it is made within three years from the date of service on the dealer of the notice of such excess.

43. Interest.--Any amount refundable under the provisions of this part, if not refunded within six months from the date of receipt of an application in that behalf from the dealer or person concerned shall carry interest at the rate of nine per centum with effect from the date of expiry of the period specified above.

45. Appeal.--(1) Subject to such rules as may be made by State Government under this part any dealer objecting to an order of assessment or penalty or both passed by the prescribed authority against him, or a person objecting to an order of penalty passed against him or an order u/s 27 may appeal to the Joint Commissioner or the Deputy Commissioner specially authorized in this behalf.

(2) And where an order of assessment or penalty against a dealer has been passed u/s 17 or 19 by an authority other than the prescribed one as a consequence of the proceeding having been transferred by the Commissioner

under Sub-section (5) of Section 9, the dealer may appeal in the prescribed manner to the authority next above the officer passing that order not being an authority below the rank of a Joint Commissioner.

(3) No appeal under Sub-section (1) or (2) shall be admitted unless the dealer objecting to an order of assessment has paid twenty per centum of the tax assessed or full amount of admitted tax whichever is greater.

(4) Every appeal under this section shall be filed within forty-five days of the receipt of the notice of demand but where the appellate authority is satisfied that the appellant had sufficient reason for not preferring appeal within time, it may condone the delay.

(5) The appellate authority while disposing of an appeal against an order, other than an order u/s 27, may :

(a)(i) confirm, annul, reduce, enhance or otherwise modify such order; or

(ii) set aside the order directing the authority below to make fresh order after further enquiry or points as may be directed; and

(b) in other cases pass such order as it may, for reasons to be recorded in writing, deem fit.

(6) No order under this section shall be passed without giving reasonable opportunity of hearing to the appellant as also the authority whose order has been appealed against.

(7) Any appeal or proceeding relating thereto filed and pending before the Deputy Commissioner since before the coming into force of this part will be deemed to have been filed and/or transferred to the Joint Commissioner or before the Deputy Commissioner specially authorized in this behalf to hear and dispose of the same, and any appeal relating to a period prior to the coming into force of this part shall after the enforcement of this part be filed before the Joint Commissioner or Deputy Commissioner specially authorized in this behalf."

13. Section 42 deals with refund whereas Section 43 deals with interest. Sub-section (3) of Section 45 provides that no appeal under Sub-section (1) or (2) is permitted, unless the dealer objecting to the assessment has paid 20% of the tax assessed or full amount of admitted tax, whichever is greater.

14. In the instant case, no amount of tax has been admitted and, accordingly, the petitioner firm deposited 20% of the tax assessed for both years in preferring the two separate appeals for the two years in question. Both the appeals have been allowed by the Joint Commissioner, Commercial Taxes, Singhbhum Circle, Jamshedpur. It was found that no amount was payable by way of sales tax dues and the amount deposited by way of appeal fees were returned to the petitioner firm.

15. The controversy which has been raked up by the Department is not in

respect of the amount which was deposited as fees in terms of Sub-section (3) of Section 45 of the aforesaid Bihar Finance Act, 1981. The controversy is with regard to the interest, if any, payable on the said amount. It has been urged by Mr. Mittal that the interest on the amount paid by way of appeal fees should be calculated from the date on which such payment was made till the date of payment, since the State Government had utilized the benefit of the said amount during the said period. However, Mr. Modi has also countered the said argument by submitting that without complying with the provisions of Section 43 of the aforesaid Act, it was not for the Department to act in terms thereof. Although, it is true that an application for refund can be made only within a certain time frame prescribed in the proviso to Section 42 of the Bihar Finance Act, 1981, Section 43 does not appear to be strictly applicable to the facts of this case, since the deposit of appeal fee was not on account of payment of sales tax, but was in the nature of an appeal fee which was a condition precedent to the filing of the appeal, which having succeeded, it must be held that the amounts as paid by the petitioner-company were not, in fact, the actual dues of the Sales Tax Department.

16. While Mr. Modi has tried to convince us that the amount deposited under Sub-section (3) of Section 45 of the above Act was, in fact, part of the tax assessed and hence amenable to Sections 42 and 43 of the aforesaid Act, there appears to be some merit in the submissions of Mr. Mittal that the said amount being the exact amount payable by way of appeal fee, the same cannot be said to be part of the assessed tax.

17. In any event, it possibly would have been more prudent on the part of the petitioner-company to apply for refund in the manner indicated in Sections 42 and 43 of the aforesaid Act. However, once the appeals were allowed, an obligation was also cast on the Department to refund the excess amount paid as a condition precedent for filing of the appeal.

18. Since refund vouchers for Rs. 45, 254/- for the Assessment Year 1993-94 and Rs. 1,18,621/- for the Assessment year 1994-95 have already been issued in favour of the petitioner on 20th July, 2005, we dispose of the writ petition with a direction upon the respondents concerned to pay to the petitioner interest at the rate of nine percent on the amount refunded, from the date of application till the date of payment.

19. The writ application is disposed of. There will be no order as to costs.

R.K. Merathia, J.

20. I agree.