
(1991) 04 OHC CK 0032

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2155 of 1986

Indian Rare Earths Ltd.

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 24-04-1991

Acts Referred:

Citation : (1992) 2 OLR 497

Hon'ble Judges : B.L. Hansaria, C.J.;D.M. Patnaik, J

Bench : Division Bench

Advocate : Jayant Das, B. Dash, B.S. Tripathy and P.K. Rout, for the Appellant;
Ananga Patnaik, Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—Penalty amounting to a sum of Rs. 1,25,090/- was imposed on the petitioner u/s 10-A of the Central Sales Tax Act, 1956 (for short "the Act"). He preferred a revision against the aforesaid order which is still pending. The petitioner has also been asked to pay a sum of Rs. 53,367/- towards interest because of late payment of the penalty. This has been assailed in this application under Arts. 226 and 227 of the Constitution of India.

2. Shri Das appearing for the petitioner has advanced two-fold contentions. The first is that the petitioner was not at all liable to pay interest in view of what has been prescribed in Rule 16(3) of the Central Sales Tax (Orissa) Rules, 1957. His next submission is that, in any case, the interest could not have been asked to be paid till the disposal of the revision. As the argument is found on what has been prescribed in Rule 16(3) of the Rules, we may read that rule :

"R. 16. Notice of demand :

(1) xx xx xx

(2) xx xx xx

(3) In case a dealer makes default in payment of the tax together with the

penalty, if any in accordance with the notice issued under Sub-rule (1) by the date of expiry of the period allowed under the said Sub-rule, he shall be liable to pay interest on the aforesaid amount at the rate of six per centum per annum from date aforesaid for the first three months and thereafter at the rate of twelve per centum per annum :

Provided that where any appeal or revision or reference has been preferred the interest as aforesaid shall be payable from the date specified above on the tax together with the penalty, if any, ultimately found due from the dealer:

Provided further that in case the tax together with the penalty, if any, assessed on the dealer is enhanced in such appeal, revision or reference, the interest on the excess amount shall be payable from the date by which the dealer is required to make payment of such excess amount."

3. So far as the first submission of Shri Das is concerned, ha contends that Rule 16(3) has prescribed about payment of interest "on the tax together with penalty, if any" and so the penalty visualised by this rule has a direct connection with the tax payable under the Act. As in this case the penalty was imposed u/s 10-A of the Act, it is contendad that the same has no relation with the payment of tax. So far as this argument is concerned, Shri Patnaik appearing for the Department contends that the fair reading of Rule 16(3) would be that interest is payable on tax and/or penalty if any. For the disposal of the present petition, we have not felt called upon to decide this controversy inasmuch as whether the petitioner will ultimately be liable to pay the penalty is yet to be decided by the revisional authority. If it is held by the revisionsal authority that the petitioner is not liable to pa, the penalty, the question would be rendered academic. We have not felt persuaded to answer an academic question.

4. To substantiate his second submission, Shri Das relies on the first proviso to the aforesaid rule. Reading the proviso as it is, it is clear that interest is payable, on an appeal or revision or reference being preferred, on the tax together with penalty, if any, ultimately found due from the dealer. As such, till the revisions! authority decides about the liability of the dealer to pay the penalty and the amount of the same, we are of the view that the question of paying interest on the penalty does not arise. We would, therefore, accept this submission of Shri Das. Though it is contended in this connection by Shri Patnaik that the first proviso has to be read along with the second proviso, even if it is done. the conclusion reached by us would not be different, because the second proviso says that if the penalty is enhanced in revision, the interest on the excess amount shall be payable from the date by which the dealer is required to make payment of such excess amount. As such this proviso has to await for its operation till the revision Is decided.

5. In the result, the petition is allowed by quashing the liability to pay interest which the petitioner was called upon to pay by Annexure-2. The question whether interest will ultimately be payable would depend on the fate of the

revision application which is pending. As the revision application is pending since long, we would direct the revisional authority to dispose of the revision must expeditiously, if not already disposed of. There would be no order as to costs.

D.M. Patnaik, J.

6. I agree.