
(1996) 12 DEL CK 0016
In the Delhi High Court
Case No : Suit No. 575 of 1985

Kashmir Vanaspati (P) Limited

APPELLANT

Vs

State Trading Corporation of India Ltd.

RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Contract Act, 1872 — Section 72

Citation : (1997) 40 DRJ 114

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : S.K. Khanna, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This is a suit for recovery of Rs.4,55,737.35 with future interest and costs. The facts as appear from the plaint are as follows :-

(2) The Government of India decided to import edible oils/seeds in order to overcome the scarcity of the same and appointed the defendant State Trading Corporation of India as the canalising agency for importing edible oil from foreign countries and distributing the same to various manufacturers of vanaspati oil. The plaintiff is engaged in the manufacture of vanaspati at its factory situate at Jammu and the defendant had been selling imported edible oils to the plaintiff from time to time. By virtue of the orders of the Government of India, Ministry of Civil Supplies, in exercise of powers conferred by sub-clause (1) of clause 4 and sub-clause (1) of clause 4B of the Vegetable Oil Products Control Order, 1947, and the Essential Commodities Act, 1955, and various other orders and notifications issued from time to time, the plaintiff and other vanaspati manufacturers taking delivery of edible oil from the defendant were obliged to use 95% of such oil in the manufacture of vegetable oil products for edible purposes. The defendant before making delivery of the edible oil would make a demand on the factory owners with regard to the payment of price together with

Central Sales Tax and the payment would be made to the defendant by demand draft/pay orders/cheques. It is not disputed that the plaintiff had also been making the payment of the price together with Central Sales Tax demanded by the defendant. As per the allegation in the plaint the defendant had been charging from the plaintiff Central Sales Tax at the rate of 4%, whereas actually the Central Sales Tax payable was only 1%. During the period commencing from January 1, 1982 to June 30, 1983 the defendant realised from the plaintiff excess Central Sales Tax to the tune of Rs.4,46,060.75. It needs to be noticed that the payments on account of Sales Tax were made by the plaintiff without demur. However, subsequently after the supplies of the edible oil had been made by the defendant to the plaintiff, the plaintiff wrote a letter dated August 8, 1983 to the defendant making demand of refund of the excess Sales Tax paid by it. Since the defendant did not act favourably to the demand made by the plaintiff, the plaintiff filed the instant suit for recovery of Rs.3,85,737.35 and for interest at the rate of 18% per annum amounting to Rs.70,000.00 .

(3) During the course of proceedings learned counsel for the defendant made a statement that the defendant was willing to refund 3% of the Sales Tax out of the Sales Tax collected from the plaintiff as and when the same was refunded to the defendant by the Sales Tax Authorities .It is not disputed that the defendant refunded the entire amount of Rs.3,85,737.35 to the plaintiff after the same was refunded by the Sales Tax Authorities. The plaintiff now claims only a sum of Rs.70,000.00 as interest at the rate of 18% per annum from the dates the above said sum of Rs.3,85,737.35 became due and payable by the defendant to the plaintiff.

(4) Learned counsel for the plaintiff submits that even though the excess Sales Tax was paid by the plaintiff under mistake of fact and law, the defendant was liable to pay interest on the said amount. It is, however, conceded by the learned counsel for the plaintiff that the defendant did not utilise the excess amount of Sales Tax paid by the plaintiff as the same was deposited with the Sales Tax Authorities. In view of the position that the defendant did not utilise the excess Sales Tax paid by the plaintiff to it, in equity the plaintiff will not be entitled to any interest. Learned counsel for the plaintiff submitted that u/s 72 of the Contract Act the plaintiff was entitled to refund of the amount paid by it under mistake of fact and law, and since it was entitled to receive the said amount it would also be entitled to receive it with interest. I regret my inability to accede to the submission of the learned counsel for the plaintiff. The principle on the basis of which a person is asked to refund the amount paid by a party to him under mistake of fact and/or law is grounded on equitable considerations which are contained in section 72 of the Contract Act. Section 72 of the Contract Act does not speak of payment of interest on the amount refunded by the party which he had received from another party under mistake of law. Learned counsel for the plaintiff relied upon two decisions of the Supreme Court in *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, , and *Lipton India Ltd. and Others Vs. Union of India (UOI) and Others*, . I am afraid, the decisions

cited by the learned counsel have no application to the facts of the present case. In both the decisions the money had been paid to the Sales Tax Department under mistake. These were not the cases where the money was claimed from the sellers who had deposited the Sales Tax with the Sales Tax Authorities. In the case of Sales Tax Officer, Banaras (*supra*) the Supreme Court reiterating the principle laid down in section 72 of the Contract Act held that section 72 entitles the party paying the money under mistake to recover it from the party receiving the same. That decision did not talk of interest. In the second case it was the Sales Tax Department which had received the money from the plaintiff under mistake of law and had the use of the same. Asking the authority, which had utilised or could utilise the money of the other, to pay interest thereon will be just, fair and equitable. I fail to see how the aforesaid decisions help the case of the plaintiff. Undoubtedly, the plaintiff has received back the principal sum of Rs.3,85,735.35 from the defendant which the plaintiff had paid under mistake.

(5) For the foregoing reasons, the prayer of the plaintiff for payment of interest is rejected.

(6) The suit is dismissed. There will be no order as to costs.