

(2006) 11 OHC CK 0016

In the Orissa High Court

Larson and Turbo Company Ltd. and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 22B

Income Tax Act, 1961 — Section 214, 237, 240, 243, 244

Citation : (2007) 103 CLT 141 : (2007) 9 VST 491

Hon'ble Judges : I. Mahanty, J;A.K. Ganguly, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—Since in both the writ petitions, similar questions of fact and law are involved, they were heard together and are being disposed of by this common judgment.

2. Both the writ petitions were filed challenging an order dated 21st June, 2001, passed by the Sales Tax Officer, Sambalpur III Circle, Jharsuguda, as the Petitioner's claim for payment of interest for the year 1994-95 was rejected. O.J.C.No. 11460 of 2001 was filed as the said claim of interest for the aforesaid year was rejected under the Central Sales Tax Act and O.J.C.No. 11459 of 2001 was filed as the claim for payment of interest was rejected under the Orissa Sales Tax Act.

3. The relevant facts of the case are that the writ Petitioner, a Public Limited Company was carrying on the business of manufacturing of cement in the district of Jharsuguda in the State of Orissa. The said Company is registered u/s 9-C of the Orissa Sales Tax Act. Apart from that the Petitioner is also a registered pioneer large scale Industry under the Directorate of Industries and availed the Sales Tax exemption as per the IPR, 1989.

4. The Sales Tax Officer, Sambalpur III Circle, Jharsuguda, passed an order of

assessment under the Orissa Sales Tax Act and Central Sales Tax Act on 30.12.1996 for the year 1994-95. Challenging the said order of assessment, the Petitioner filed a writ petition being O.J.C.No. 2435 of 1997 with a prayer for quashing the said order of assessment dated 30.12.1999 for the year 1994-95. In the said petition a prayer was also made for a direction to the State of Orissa to issue a notification for exempting the goods" manufactured by the Petitioner company as a large scale ". industry in terms of the provisions of IPR, 1989. In the said writ petition, the Petitioner also filed a Miscellaneous Case bearing No. 1960 of 1997 with a prayer for stay of further proceeding in terms of the impugned order of assessment and a prayer was also made for retraining the Sales Tax Officer from proceeding for further assessment for subsequent year and also for grant of full stay of the tax demanded.

5. On such petition, this Hon"ble Court issued notice on 13.3.1997 and also passed an interim order. The relevant part of the said order is as follows:

Finding a prima facie case, we pass an interim order of stay of further proceeding in connection with Annexures-1 and 1 A, on condition that the Petitioner without prejudice, should pay one-third of the total demand within a period of fifteen days. We make it clear that in case the Petitioner succeeds, it will be entitled to refund and the refund will be effected with interest in the prescribed manner from the date of deposit notwithstanding any formal application ultimately. In default of deposit, as indicated," the interim order stands vacated.

6. Ultimately, the writ petition came up for hearing along with a batch of other cases and the same was disposed of by this Court by an order dated 3rd April, 1998. By the said order, the Petitioner was given liberty to challenge the assessment proceeding" and accordingly the Petitioner filed an appeal before the First Appellate Authority and moved for stay. The Petitioner's prayer for stay was disposed of by the First Appellate Authority accepting the deposit which was made by the Petitioner pursuant to the order of the Hon"ble High Court, referred to herein above.

7. The Petitioner's case is that pursuant to an interim order of this Court, it deposited Rs.1 ,57 ,09 ,617/ - towards Orissa Sales Tax and Rs.1,40,68,822/- towards Central Sales Tax on 27th March, 1997. The First Appellate Authority by an order dated 16.3.2000 passed in Sales Tax; Appeal No.AA-13/SA-III of 1998-1999 allowed the appeal in part by fixing the tax and surcharge payable by the Petitioner at Rs. 15,73,691.80 paise and further directed that:

excess amount paid by the Appellant Company if any may be refunded back as per the provisions of law.

8. After disposal of the appeal, the Sales Tax authority adjusted the amount of Rs.1,40,68,822/- deposited by the Petitioner towards the C.S.T. against the tax liability of the Petitioner for the year 1999-2000. Thereafter the Appellate Authority disposed of the proceeding under the C.S.T. Act with an order of refund. The said order is dated 23rd March, 2000. Thereafter the Petitioner filed

an application for refund of C.S.T. amount of Rs.1,40,68,822/-adjusted towards the tax liability of the Petitioner for the assessment year 1999-2000. Such application was made on 13.5.2000. The Petitioner also filed an application on 16.6.2000 before the Sales Tax Officer claiming interest on his deposit i.e. from the date of the deposit as per the order of the Hon''ble Court. The said prayer for interest was rejected by the Sales Tax Officer by an order dated 21.6.2001, inter alia, on the ground that the refund which was granted to the Petitioner does not arise out of the order of the High Court, but from the order of the First Appellate authority. The writ petition did not succeed before the High Court and, therefore, interest cannot be granted in view of the interim order which was passed in a proceeding which was ultimately decided against the Petitioner. It has also been stated that refund was granted pursuant to Section 14 of the O.S.T Act and the said refund having been granted within a period of 90 days, no interest can be granted to the Petitioner.

9. Similar order has been passed on the Petitioner's prayer for grant of interest in the C.S.T. proceeding.

This Court finds that the order passed by the authority refusing the Petitioner's prayer for grant of interest is based on sound reasons. It appears clearly from the order of the High Court dated 13.3.1 997 that the question of refund is based on a condition which is expressed clearly-in the-following words:

in case the Petitioner succeeds, it will be entitled to refund and the refund will be effected with" interest in the prescribed manner from the date of deposit notwithstanding any formal application ultimately.

In the instant case, the writ Petitioner has not succeeded. The final order which has been passed on the writ petition is as follows:

26. The prayer for issuance of a writ commanding the State Government to issue notification u/s 6 is found to be misconceived and the same is refused. We make it clear that we have not scrutinized the assessment order. We, however, grant leave to the Petitioner to challenge the same so far as its unit is concerned. But the point of promissory: estoppel as claimed is ruled out.

10. Apart from that, in Paragraph-24 of the judgment, the Learned Judges held that the Court does not appreciate that the assessment should be challenged by the writ Petitioner on the score that a proper notification ought to have been made by the State Government. Therefore, the challenge made by the writ Petitioner to the assessment order also failed. In Paragraph-25 the Court held that the interpretations given by the Petitioner on the scope of I.P.R. for relief in respect of its proceedings also are not correct.

It is well settled that an interim order merges with the final and it cannot survive after the final order is passed. The interim direction for refund of the deposited amount with interest was not reiterated in the final order. In fact it could not be reiterated as the final order is one of dismissal of the writ petition.

11. The Learned Counsel for the Petitioner cited a few judgments in respect of his contention. The first judgment on which reliance was placed was rendered in the case of Tata Refractories Ltd. and Anr. v. Sales Tax Officer and Ors. reported in (2003) 1 S.C.C. 65. In that case on the writ petition which was considered by the Hon''ble Supreme Court, the Orissa High Court had passed a final order to the following effect:

...In the event the Petitioner succeeds in the second appeal, then the Sales Tax Authorities would refund the amount with interest at the rate of 18 per cent per annum.

The writ application is disposed of.

The assessee succeeded in the Second Appeal and consequently the amount which was deposited by the assessee pursuant to the order of the High Court became liable to be paid by the Revenue to the assessee. The assessee filed an application claiming such refund. At that stage the Revenue denied the Appellant the benefit of interest granted by the High Court. Aggrieved by such denial of the Revenue, the assessee approached the High Court with a writ petition and the High Court according to the Hon''ble Supreme Court took a very narrow view of the matter and held that the assessee is only entitled to an interest that was permissible u/s 14 of O.S.T. Act.

12. In the background of these facts, the Hon''ble Supreme Court held that the direction given by the High Court to deposit the amount was given in exercise of High Court''s jurisdiction under Articles 226 and 227 of the Constitution of India and such deposit would be governed by the conditions imposed in the High Court''s order directing such deposit. As such the claim for interest of the Petitioner in such a case will not be governed by the provisions of Section 14 of the O.S.T. Act. As such the Supreme Court allowed the appeal of the assessee and directed the rate of interest mandated in the High Court''s order. It is obvious from the aforesaid narration of events that the facts in the present case and the facts in the case of Tata Refractories Ltd. stand on totally different footing. First of all the direction which was given by the High Court under Articles 226/227 of the Constitution of India in Tata Refractories was a direction given at the final disposal of the writ petition and not at an interim stage. Nor that writ petition was dismissed. This is a very, vital distinction. In the instant case the interim direction did not fructify in the final order. On the other hand with the dismissal of the writ petition, the interim order loses all its force.

13. Apart from that when the Statutory appeal was filed by the Petitioner after dismissal of the writ petition, the Appellate Authority treated the deposit in the writ as a deposit in the Statutory appeal. Therefore, the said deposit can no longer be treated to be a deposit made pursuant to the interim order passed by this Court. It was open for the Petitioner after dismissal of the writ petition to withdraw the said deposit. But since as a condition for filing an appeal some deposits are required to be made and the Petitioner instead of withdrawing the

said deposit made a prayer before the Appellate Authority for treating the said deposit as a deposit in the First Appeal, thereafter the so called right flowing from the interim order passed in the writ petition, assuming but not admitting that the Petitioner had any such right, comes to an end. So in the facts of the the decision in the case of Tata Refractories has no application.

14. The Petitioner also relied on another decision of the Supreme Court in the case of Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, . That was a case filed by a retired Judge of a High Court in connection with some service benefits. In Paragraph-3 of the said judgment the Learned Judges held that in the High Court Union of India contested the Learned Judge's claim for entitlement of cash equivalent of the allowances including the benefit conferred by Section 22B of the High Court Judges (Conditions of Service) Act, 1954. It appears that u/s 22B of the said Act, a staff car is to be provided to the High Court Judge and there was failure on the part of Bihar to provide such car. Payment to the Judge on that account and payment under the Death-cum-Retirement Gratuity was allowed but was delayed by a year as a result of which the Learned Judge claimed interest on the balance amount at 12% and the same was rightly allowed by the High Court. In granting the said claim, the Supreme Court observed that once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Reliance was sought to be placed on the said observation by the Hon'ble Supreme Court but the said observations cannot be taken de hors the context in which they are made. Apart from that, in the instant case, the direction to refund with interest to the Petitioner was conditioned on the success of the writ petition but the writ Petitioner had not succeeded. Therefore, the Petitioner is not entitled to get any interest in terms of the interim order since the very term of grant of such interest could not be fulfilled. Therefore, the decision in the case of S.S. Sandhawalia relied upon by the Learned Counsel for the Petitioner is totally out of context in the facts and circumstances of the present case and has no application.

15. Learned Counsel for the Petitioner also relied on a decision of the Supreme Court in the case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others, . In that case, the Learned Judges were considering the provisions of Sections 214, 237, 240, 243 and 244 of the Income Tax Act in the context of delay in refunding to the assessee the excess amount. The Learned Judges held that interest on excess amount is payable at the rate specified therein from the first day of the year of assessment to the date of regular assessment and the Learned Judges further held that once the interest becomes due, it takes the same colour as the excess amount of tax which is refundable on regular assessment. The same principles have been followed in this case. On regular assessment the First Appellate Authority has directed refund with interest in accordance with the provisions of law. In the instant case, Section 14-C governs the field on the claim of interest on refundable amount. Pursuant to the order of

the First Appellate Authority refund has been made within the statutory period. Therefore, the principles which have been laid down in the case of Sandvik Asia Ltd., have been followed in this case.

16. Learned Counsel for the Petitioner also relied on a Full Bench judgment of this Court in the case of Id Industries Ltd. and Ors. v. State of Orissa and Ors. In that case the question which fell for consideration before the Full Bench was:

Whether there can be any direction for grant of interest in a case where reassessment has been directed, notwithstanding the fact that reassessment has not been completed in view of provisions contained in Sections 14 and 14-C of the Act.

It can easily be seen that the question which was decided in the Full Bench of this Court has nothing to do with the present case and the decision in "that case does not support the Petitioner"s contention either.

17. For the reasons discussed above, this Court cannot accept the contention of the Learned Counsel for the Petitioner and does not find any error in the order dated 21.6.2001 passed by the Revenue.

18. Both the writ petitions are dismissed. There shall be no order as to costs.

I. Mahanty, J.

19. I agree.