(2022) 03 OHC CK 0075

In the Orissa High Court

Case No : Writ Petition (Civil) Nos. 3158, 5222 Of 2004

M/s. Mukand Ltd APPELLANT

Vs

State Of Orissa And Others RESPONDENT

Date of Decision : 14-03-2022

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 14(C)

Citation : (2022) 03 OHC CK 0075

Hon'ble Judges : Dr. S. Muralidhar, CJ;A.K.Mohapatra, J

Bench : Division Bench

Advocate : Bibik Mohanty, Sunil Mishr

Final Decision : Disposed Of

Judgement

1. These two writ petitions have been again listed before this Court only as a fall out of the Full Bench decision of this Court in IDL Industries Ltd. v. State of Orissa (2004) 134 STC 62 (Orissa).

2. The question before the Full Bench concerns the payment of interest under Section 14 C of the Orissa Sales Tax Act 1947 on the amount refunded.

3. The Full Bench answered the question referred to it in paragraph-68 of the judgment. Immediately relevant for the present purposes is a direction contained in paragraph-68 (6), which reads as under:

"(6) When a dealer is directed to deposit some amount as per the orders of the High Court and the Supreme Court he is entitled to get compensation by way of interest on the amount of refund ultimately calculated from such date at such rate as is directed by the said Courts."

4. Mr. Mohanty, learned Senior Advocate appearing for the Petitioner places reliance on the judgment in Tata Refractories Ltd. v. Sales Tax Officer (2003) 1 SCC 65 and urges that the interest should begin to run from the date of the deposit.

5. Mr. Sunil Mishra, learned Additional Standing Counsel for the Department however resists the above submission by stating that an earlier order passed by this Court on 10th April 2019 in W.P.(C) No.9048 of 2004 granting interest from the date of assessment was recalled by this Court subsequently by an order dated 24th December, 2019.

6. Be that as it may, the question is only this: what should be the date from which interest on the refund amount should become payable? The incidental question is at what rate should such interest be paid.

7. From the point of view of the Assessee, since this is a question of interest on refund, it is clear that if the Assessee is entitled to refund, the interest should begin to run from the date on which the Assessee parted with the money in the first instance.

8. The refund itself is as a result of a finding that the tax ought not to have been collected from the Assessee in the first place. If the tax has to be refunded, clearly therefore in the considered view of the Court, the interest thereon should begin to run from the date of the deposit of such tax.

9. Consequently, the issue in both the writ petitions is answered as under:

The Department will pay to each of the Assessee simple interest @6% per annum on the amount of refund from the period beginning with the date of making payment of the sales tax in the first instance till the date of actual payment which shall not be more than eight weeks from today. If there is any further delay than the above period in making the refund, the Department will be liable to pay simple interest @9% per annum on the said sum for the period of delay.

10. The writ petitions are disposed of in the above terms.

11. An urgent certified copy of this order be issued as per rules.

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