**(2009) 02 OHC CK 0057**

**In the Orissa High Court**

Simplex Concrete Piles (India) Ltd. APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

**Date of Decision :** 11-02-2009

**Acts Referred:**
Orissa Sales Tax Act, 1947 — Section 14C, 14D

**Citation :** (2009) 107 CLT 651 : (2009) 1 OLR 800 Supp : (2009) 23 VST 458

**Hon'ble Judges :** B.S. Chauhan, C.J;B.N. Mahapatra, J

**Bench :** Division Bench

**Final Decision :** Allowed

# Judgement

B.N. Mahapatra, J.—These two Writ Petitions are directed against the Order Dated 12.7.2001 passed by the Sales Tax Officer, Dhenkanal Circle, Angul, Ward-B, (hereinafter referred to as the ''STO''), wherein the STO has rejected the Petitioner''s refund applications dated 2.5.1997 filed for the years 1984-85 and 1985-86 on the ground that the same is illegal and violative of the provisions contained in the Orissa Sales Tax Act, 1947 (hereinafter referred to as the ''OST Act'') and the Rules framed thereunder.

2. Bereft of unnecessary details, the facts and circumstances giving rise to the present Writ Petitions are that the Petitioner is a Public Limited Company registered under the Companies Act, 1913 having, it''s registered office At: 12/1, Nellie Sengupta Sarani, Kolkata. The Petitioner entered into a contract with M/s. National Aluminium Company Ltd. (hereinafter referred to as the ''NALCO'') for civil and structural construction at NALCO''s plant site, Angul. Pursuant to the said contract with NALCO, the Petitioner opened a site, office at Angul and got itself registered under the OST Act as well as the Central Sales Tax Act, 1956 (hereinafter referred to as the ''CST Act'') with the STO-Opposite Party No. 1. The STO assessed the Petitioner for the assessment years 1984r85 and 1985-86 vide his session 31.12.1988 and raised huge demand of tax.

Being aggrieved by the said orders of assessment, the Petitioner filed first appeals before the Asst. Commissioner of Sales Tax, Cuttack-II Range, Cuttack (hereinafter referred to as the ''ACST'') and the same were disposed of by the ACST by its Order Dated 20.12.1990. Against the said orders of the ACST, the Petitioner filed second appeals before the Orissa Sales Tax Tribunal, Cuttack (hereinafter referred to as the Tribunal''). The Full Bench of the Learned Tribunal disposed of the said appeals by its session 7.1.1995, and remitted the matters back to the STO for re-assessment. Pursuant to the said order of the Learned Tribunal, the STO passed the orders of re-assessment on 29/31.3.1997 granting refund of Rs. 3,29,173 and Rs. 3,645 under the OST Act and the Orissa Additional Sales Tax Rules (hereinafter referred to as the ''OAST Rules'') respectively for the year 1984-85. For the year 1985-86, a refund of Rs. 1,86,541 was granted under the OST Act on re-assessment. Pursuant to the said re-assessment orders, the Petitioner filed refund applications before the Learned STO for both the years on 2.5.1997. While the said refund applications were pending before the STO, on 12.8.1997 the ACST issued notice to the Petitioner to show cause by 28.8.1997 as to why the orders of re-assessment dated 31.3.1997 passed by the STO should not be revised under Rule 80 of the Orissa Sales Tax Rules, 1947 (hereinafter referred to as the ''OST Rules'') as the same was prejudicial to the interest of the Revenue. On 29.8.1997, the ACST passed an order under Rule 80 of the OST Rules raising tax demand against the Petitioner.

Being aggrieved by the orders passed by the ACST under Rule 80 of the OST Rules, the Petitioner filed Writ Petitions bearing O.J.C. No. 15198 of 1997 and O.J.C. No. 15199 of 1997 before this Court. This Court on 12.7.2000, set aside the impugned orders passed by the ACST under Rule 80 of the OST Rules and remitted the matter back to the ACST for examination/verification of correctness of details of the payment said to have been made by the N ALCO to the Petitioner. The ACST by its Order Dated 15.06.2001, dropped the suo motu proceeding for the year 1984-85 on the ground that the order passed by the STO for the said year was not erroneous and prejudicial to the interest of the Revenue, and, for the year 1985-86, he marginally reduced the amount of refund from Rs. 1,86,541 to Rs. 1,76,185.

Thereafter, on 12.07.2001, the STO rejected the Petitioner''s refund applications dated 02.5.1997 on the ground that the case was sub judice before the Hon''ble High Court and, therefore, the refund applications had no merit to be considered. Hence, the present Writ Petitions.

3. Learned Counsel appearing on behalf of the Petitioner submitted that the STO has rejected the refund applications without giving any opportunity of hearing to the Petitioner, which is violative of Sub-rule (2) of Rule 39 of the OST Rules. The refund applications were supposed to be disposed of within a period of ninety days from the date of filing of refund applications, i.e., by 2.8.1997, as by that time there was no order either passed by the ACST raising demand or by the Commissioner of Sales Tax withholding the refund exercising power u/s 14-D of

the OST Act. No valid and cogent reason has been assigned by the STO for rejecting the refund applications of the Petitioner dated 12.07.2001 after the assessments attained finality on 15.06.2001. He should have released the refund along with interest immediately after 15.6.2001 when the assessment attained finality instead of asking the Petitioner to file fresh refund applications.

4. Mr. Kar, Learned Counsel appearing on behalf of the Revenue submitted that there is no infirmity in the impugned orders passed by the STO. According to him, since the orders of re-assessment granting refund for the years 1984-85 and 1985-86 were the subject matter of further proceeding under the Act, the Learned STO was justified to reject the Petitioner''s refund applications dated 2.5.1997 on 12.7.2001 by the impugned orders. However, he fairly conceded that no order has been passed by the Commissioner withholding refund exercising power u/s 14-D of OST Act.

5. In view of the rival contentions of the respective parties, the following questions fall for consideration by this Court:

(i) Whether, on the facts and in the circumstances of the case, the STO is justified to reject the Petitioner''s refund applications dated 2.5.1997 by its Order Dated 12.7.2001 after the assessments attained finality on 15.06.2001?

(ii) Whether, on the facts and in the circumstances of the case, the Petitioner is entitled to get interest on the amount of refund from the date of filing of refund applications, i.e., 02.05.1997.

6. The facts which are not disputed in the cases at hand are that the Petitioner filed its refund applications on 2.5.1997 pursuant to the re-assessment orders passed by the STO on 29/31.3.1997 granting refund of Rs. 3,29,173 and Rs. 3,645 under the OST Act and the OAST Rules respectively for the year 1984-85 and Rs. 1,86,541 for the year 1985-86. The STO has not released the said refund amount within a period of ninety days from the date of receipt of the said applications. No order withholding refund has been passed by the Commissioner exercising power u/s 14-D of the OST Act till the refund applications were rejected on 12.7.2001.Thesuomotu revision initiated by the ACST for the year 1984-85 was finally dropped and for the year 1985-86, the refund was marginally reduced to Rs. 1,76,185. The orders of assessment attained finality on 15.6.2001 and the Petitioner''s refund applications dated 2.5.1997 were rejected vide impugned Order Dated 12.7.2001. Challenging the impugned orders, the Petitioner approached this Court on 4.9.2001.

7. Section 14 provides that the Commissioner shall, in the prescribed manner, refund to a dealer applying in this behalf any amount of tax, penalty or interest paid by such dealer in excess of the amount due from him under the OST Act, either by cash payment or by deduction of such excess amount from the amount of tax, penalty or interest due in respect of any other period.

Thus, for claiming refund u/s 14 there must be an order of assessment or an order imposing penalty or a final order passed in appeal or revision/reference granting refund.

8. In the present case, the Petitioner''s right to get refund flows from the orders of re-assessment dated 29.3.1997 and, accordingly, the Petitioner made applications for refund on 2.5.1997. The refund applications were filed within the prescribed period of limitation u/s 14 of the OST Act. The STO instead of granting refund within a period of ninety days sat over the matter for more than four years. The impugned orders do not show any reason as to why the said refund applications were not disposed of within a reasonable time.

9. Section 14-D authorizes the Commissioner to withhold the refund for some time where an order giving rise to a refund is the subject matter of an appeal or further proceeding under the OST Act. This is the only enabling provision available to the Commissioner to withhold the refund till such time as he thinks fit. No order has ever been passed by the Commissioner exercising power u/s 14- D for withholding the refund till the refund applications were rejected on 12.7.2001.

Thus, the refund applications dated 2.5.1997 filed by the Petitioner were kept pending by the STO for more than four years without any authority of law.

10. Another important aspect is that before rejecting the Petitioner''s refund applications on 12.7.2001, the STO has not afforded any opportunity of hearing to the Petitioner and has not made any enquiry as envisaged in Rule 39(2) of the OST Rules. The only reason given by the STO for rejecting the Petitioner''s refund applications is that the orders of the STO from which the refund flows became infructuous when the Learned ACST raised demand to the tune of Rs. 1,62,508 and Rs. 57,815 for the year 1984-85 and Rs. 6,81,639 and Rs. 1,08,523 for the year 1985-86 under the OST Act and OAST Rules respectively vide session 28.8.1997, against which, Petitioner filed Writ Petitions before this Court challenging the said orders. In the impugned orders, the STO has not assigned any reason as to why he has not released the amount of refund within 90 days from the date of filing of refund applications and waited till orders were passed by the Learned ACST raising demand against the Petitioner in his suo motu revisional orders. No reason has also been assigned as to why no order was passed by the Commissioner exercising his power u/s 14-D of the OST Act to withhold the refund if Opposite Parties wanted to withhold the refund; We are shocked that the STO has rejected the refund applications only after the assessments attained finality on 15.6.2001 when the ACST dropped the proceeding for the year 1984-85 and marginally reduced the amount of refund from Rs. 1,86,541 to Rs. 1,76,185 for the year 1985-86.Therefore, the impugned orders passed by Opposite Party No. 1 rejecting the Petitioner''s refund applications dated 2.5.1997 on 12.7.2001 are not sustainable in the eyes of law and are liable to be quashed.

11. The second question relates to payment of interest on the refund amount.

 

The STO should always release the amount of refund claimed in the refund applications within a period cf ninety days from the date of application, if it is found correct in all respect, otherwise the dealer claiming refund shall be entitled to interest on the refund amount. In that event, it would be an unnecessary financial burden on the State exchequer, which should always be avoided.

This Court in Orient Paper Mills v. State of Orissa and Ors. (1988) 70 STC 333 Ori, held that refund applications should not be kept pending without being attended to by the Sales Tax Officer for years together. Resorting to quick action after long delay just to disallow interest to an assessee is a fraud on the statute and cannot be condoned. The Court awarded interest under such circumstances.

This Court in Mahabir Rice Mill v. Sales Tax Office and Anr. (2000) 120 STC 236 (Ori), held that failure to intimate dealer about the defect, if any, in the application for refund within ninety days because of his own fault, the Sales Tax Officer cannot deny interest. Enquiry, if any, required under Rule 39(2) of the Orissa Sales Tax Rules has to be conducted within the period of ninety days, which is the time limit prescribed for grant of refund.

A similar view has also been taken by this Court in Delkon India Private Ltd. v. Sales Tax Officer, Rourkela and Ors. O.J.C. No. 6619 of 2008 disposed of on 19.11.2008.

12. As it appears, the STO has rejected Petitioner''s applications dated 02.05.1997 for refund on 12.07.2001 i.e., after the assessment attained finality on 1.5.06.2001 only to avoid payment of interest, which accrued in favour of the Petitioner for the period he kept the refund applications pending after expiry of ninety days from the date of filing of refund applications without any authority of law. At least, the Assessing Officer should have released the amount of refund along with interest immediately after the assessment attained finality on 15.06.2001, instead of rejecting Petitioner''s applications for refund on 12.07.2001 and asking the Petitioner to file fresh applications for refund.

13. Thus, the dealer is entitled to interest u/s 14C of the OST Act from the date of filing of the refund applications, i.e., 02.05.1997 till the date of payment.

14. In view of the above, the orders passed by the STO under Annexure-1 are hereby quashed and the STO-Opposite Party No. 2 is directed to release the amount of refund, i.e., Rs. 3,29,173 and Rs. 3,645 under the OST Act and OAST Rules respectively for the year 1984-85 and Rs. 1,76,185 for the year 1985-86 in favour of the Petitioner along with interest, as indicated above, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above directions, the Writ Petitions are allowed.

There will be no order as to cost.

B.S. Chauhan, C.J.

I agree.