(2000) 08 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8792 of 2000

Sutlej Industries Limited	APPELLANT
Vs	
State of Punjab and others	RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (2000) 08 P&H CK 0053

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : G.R. Sethi, for the Appellant; Rupinder Khosla, for the Respondent

Judgement

G.s. Singhvi, J.—This is a petition for issuance of a writ of mandamus to the respondents to pay interest on the amount of Rs. 2,43,000 refunded to him in pursuance of the order passed by the Sales Tax Tribunal, Punjab, (for short, "the Tribunal").

2. The facts necessary for deciding the petitioner''s claim are that by an order dated March 27, 1995 passed u/s 14B(7) of the Punjab General Sales Tax Act, 1948 (for short, "the Act"), the Excise and Taxation Officer-cum-Officer, In-charge, Sales Tax Check Barrier, Harsa Manser, District Hoshiarpur, imposed penalty of Rs. 2,43,000 on the petitioner on the ground that it was transporting goods without necessary documents. The appeal filed by the petitioner against the penalty order was dismissed by the Deputy Excise and Taxation Commissioner (Appeals), Jalandhar, but the second appeal filed by it was allowed by the Tribunal vide its order dated September 8, 1997. After about ten months, the petitioner submitted application, annexure P4, dated July 16, 1998 to the Assistant Excise and Taxation Commissioner, Hoshiarpur, for refund of Rs. 2,43,000. In reply, the officer concerned vide letter dated July 25, 1998 (annexure P5) informed the Senior Manager of the petitioner that the amount of Rs. 2,43,000 had been sent to the Excise and Taxation Officer, Jalandhar and, therefore, he should correspond with that officer for the purpose of refund.

Thereafter, representative of the petitioner submitted representations, annexure P6, dated July 29, 1998, annexure P7 dated August 17, 1998, annexure P8 dated September 19, 1998 and annexure P9 dated December 4, 1998 to the Deputy Director (Enforcement)-cum-Assistant Excise and Taxation Commissioner, Jalandhar, for refund of the amount, but the latter did not give any response till June, 1999 when the refund voucher dated June 9, 1999 was issued in favour of the petitioner.

3. After encashing the refund voucher, which took about three months due to the technical objections raised by different authorities, the petitioner submitted applications, annexures P13 to P15 for payment of interest in accordance with section 12(3) of the Act and having failed to get the desired relief, it has invoked jurisdiction of this Court under article 226 of the Constitution of India for directing the respondents to pay interest for the period from April, 1995 to September, 1999. In support of its claim, the petitioner has relied on the following decisions :

(1) Punjab State University Text Book Board Vs. State of Punjab and Others,

(2) Ram Singh Jaspal Singh Vs. State of Haryana and Another, .

(3) Haryana Drinks Private Limited Vs. State of Haryana and Others, .

(4) Aggarwal Int Udyog v. Deputy Excise and Taxation Commissioner [1996] 101 STC 210 (P&H).

(5) Chemiplast Industries v. State of Haryana [1997] 104 STC 469 (P&H).

4. The respondents have challenged the petitioner''s entitlement to get interest on the ground that the order made by the appellate authority of the Sales Tax Tribunal to annul the penalty imposed u/s 14B(7) cannot be treated as an order made by the Assessing Authority for the purpose of section 12(3) of the Act. They have averred that the delay in the refund of the amount of penalty was not deliberate and, therefore, no interest should be awarded to the petitioner.

5. Shri G. R. Sethi argued that the delay in the refund of the amount of penalty deposited by the petitioner in pursuance of the order passed by the Excise and Taxation Officer-cum-Officer In-charge, Sales Tax Check Barrier, u/s 14B(7) of the Act is not attributable to the petitioner and, therefore, the respondents are bound to pay interest for the period during which the amount remained in their hands. Shri Rupinder Khosla conceded that the amount which became due to the petitioner in view of the order dated September 8, 1997 passed by the Tribunal was actually paid to it in October, 1999, but argued that the respondents cannot be made to pay interest u/s 12(3) of the Act because the Excise and Taxation Officer-cum-Officer In-charge, Sales Tax Check Barrier, does not fall within the ambit of definition of the Assessing Authority.

6. We have thoughtfully considered the respective submissions. Section 12(1) to (4) of the Act which has bearing on the decision of the issue relating to award of

interest read as under :

"12. Refund. - (1) The assessing authority shall in the prescribed manner refund to a registered dealer applying in this behalf any amount of tax, interest or penalty paid by such dealer under this Act, -

(a) If the amount of tax, penalty or interest so paid is in excess of the amount due from him under this Act; or

(b) If the amount of tax so paid is in respect of the sale or purchase of any declared goods and such goods are sold in the course of inter-State trade or commerce :

either by a refund voucher or, at the option of the dealer, by adjustment of the amount so paid with the amount due from him, in respect of any other period;

Provided that the refund under clause (b) shall be subject to such conditions, as may be prescribed :

Provided further that no refund under this section shall be allowed unless the claim for refund is made within a period of three years from the date on which such claim accrues.

Explanation. - For the purposes of this sub-section the expression ''in the course of inter-State trade or commerce'' shall have the meaning assigned to it by section 3 of the Central Sales Tax Act, 1956.

(2) Notwithstanding anything contained in sub-section (1), the assessing authority shall first adjust the amount to be refunded towards the recovery of any amount due from the dealer on the date of such adjustment, and shall thereafter refund the balance, if any.

(3) Where any amount required to be refunded by the assessing authority to any person by virtue of an order issued under this Act is not refunded to him within ninety days of the date of the order, the dealer shall be entitled to get simple interest on such amount at the rate of one per centum per month from the date immediately following the date of expiry of the said period for a period of one month and thereafter at the rate of one and a half per centum per month till the refund is made :

Provided that for the purpose of calculation of the interest, part of a month shall be considered as one month and any amount less than one hundred rupees shall be considered as one hundred rupees,

(4) If the delay in allowing refund within the aforesaid period of ninety days is for reasons beyond the control of the assessing authority or attributable to the dealer, whether wholly or in part, the period of such delay shall be excluded from the period for which interest is payable.

(5) to (7) ....".

7. A perusal of the provisions quoted above shows that on an application submitted by a registered dealer in this behalf, the Assessing Authority is required to refund the amount of tax, interest or penalty paid by such dealer if the amount of tax, penalty or interest so paid is in excess of the amount due from him under the Act or if the amount of tax so paid is in respect of the sale or purchase of any declared goods and such goods are sold in the course of inter-State trade or commerce. Sub-section (2) of section 12 of the Act which begins with a non obstante clause makes it mandatory for the Assessing Authority to first adjust the amount of refund towards the recovery of any amount due from the dealer on the date of such adjustment and sub-section (3) provides for payment of interest if the amount is not refunded within 90 days of the date of the order. Sub-section (4) of section 12 lays down that if the delay in allowing the refund within the period of 90 days is due to the reasons beyond the control of the Assessing Authority or is attributable to the dealer, then no interest shall be payable for the period of such delay.

8. The argument of Shri Khosla that the Excise and Taxation Officer-cum-Officer In-charge, Sales Tax Check Barrier, does not fall within the ambit of expression "Assessing Authority" has no bearing on the decision of the petitioner''s claim for payment of interest in accordance with section 12(3) of the Act because what has been contemplated by that section is that the dealer shall get interest if there is a delay in the payment of the amount required to be refunded by the Assessing Authority. The facts of this case show that the amount of penalty was deposited by the petitioner in pursuance of the order passed by the Excise and Taxation Officer-cum-Officer In-charge, Sales Tax Check Barrier. When the order of penalty was set aside by the Tribunal, the petitioner became entitled to get refund of the amount deposited by it. The Joint Director (Enforcement)-cum-Assistant Excise and Taxation Commissioner refunded the amount to the petitioner after a gap of more than two years and three months and as it has not been pleaded by the respondents that the said officer does not fall within the definition of the Assessing Authority u/s 2(a) of the Act, the petitioner''s entitlement to get interest cannot be questioned.

9. We are further of the view that even if section 12(3) of the Act is held not applicable in the matter of refund of the amount of penalty deposited in pursuance of the order made u/s 14B(7) of the Act, the petitioner deserves to be awarded interest by applying the common law principle that a person who retains the money of other without lawful authority must compensate the latter by paying interest. In this case, the petitioner became entitled to get the refund of the amount deposited by it immediately after the acceptance of its appeal by the Tribunal, but the actual payment was made after a period of two years and three months. This shows that the money due to the petitioner was retained by the respondents for that long without any lawful authority. For this, they must compensate the petitioner and in our opinion, the rate of interest prescribed u/s 12(3) of the Act can be treated as reasonable yard-stick for compensating it.

10. For the reasons mentioned above, the writ petition is allowed. The respondents are directed to pay interest to the petitioner at the rate prescribed u/s 12(3) of the Act for the period between the date of receipt of application dated March 20, 1998 and the date of actual payment. The respondents shall pay the amount of interest within one month from the date of submission/receipt of certified copy of this order.

11. Writ petition allowed.

