

(2002) 11 SC CK 0001
In the Supreme Court Of India
Case No : Civil Appeal 7760 of 2002

Tata Refractories Ltd. and Another	Vs	APPELLANT
Sales Tax Officer and Others		RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 95 CLT 1 : (2003) 260 ITR 312 : (2003) 1 JCR 167 : (2002) 9 JT 580 : (2003) 1 OLR 506 : (2003) 129 STC 506 : (2003) 129 TAXMAN 544

Hon'ble Judges : N. Santosh Hedge, J; B. P. Singh, J

Bench : Division Bench

Advocate : V.A. Bobde, K.K. Lahiri, Ujjwal Kr. Jha, Aslam Ahmed, Gourav Kejriwal and Ejaz Maqbool, for the Appellant; Kirit N. Raval SG and Kirti Renu Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Santosh Hegde, J.—Heard learned counsel. Leave granted.

2. A short question arises for our consideration whether the provisions of the Orissa Sales Tax Act (the Act) would in any manner disentitle the appellants from claiming interest which has become payable by virtue of an interim order made by the High Court in exercise of its writ jurisdiction under Article 226 and 227 of the Constitution.

3. The appellants herein had challenged an interim order made by the Additional Commissioner of Sales Tax in a writ petition before the High Court of Judicature, Orissa, Cuttack in OJC No. 1200 of 1995. The High Court in the said writ petition made an order on 15.3.1995 in the following terms:

"...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."

4. Subsequently the appellant succeeded in the proceedings and the amount

directed to be deposited by the High Court as per the above noted order became liable to be refunded to the appellant. For reasons better known, instead of asking the respondent State to repay the amount deposited by them, the appellant seems to have filed an application under the provisions of the Orissa Sales Tax Act (the 'Act') for refund of the amount in deposit. Taking advantage of this procedure followed by the appellant, the respondent State has denied the appellant the benefit of interest granted by the High Court vide its order referred to hereinabove.

5. Aggrieved by the denial of that part of the interest which was due to them under the orders of the High Court, the appellants again approached the High Court in writ petition in OJC No. 11998 of 2000 wherein the High Court taking a very narrow view of the matter held that the appellant is entitled only to the interest that was permissible u/s 14 of the Act.

6. Being aggrieved by the said order, the appellants are before us in this appeal.

7. It is to be noted that the order of the High Court in earlier writ petition namely OJC No. 1200 of 1995 was made by the High Court in the exercise of its power under Article 226 and 227 of the Constitution of India wherein while directing the appellants to deposit the amount quantified therein, the High Court also issued a direction to the respondent State that it should refund the amount with interest at the rate of 18% per annum in the event of the appellants succeeding in the second appeal. This order is definitely not one made under the provisions of the Act. The respondent State which took benefit of the said order and retained the amount deposited by the appellant, cannot now be permitted to say when it comes to refund direction issued by the High Court in its order dated 15.3.1995 will not be binding on it and it is only the provisions of the statute that will bind. As noted above, it is not by invoking the provisions of the Act, the deposit was directed to be made by the High Court, hence, any direction made while making an order under Article 226 and 227, to deposit any sum of money will be governed by the conditions imposed in the order directing such deposit. On the contrary if any such condition as to the interest had not been made by the High Court while directing the deposit of the amount then it could be said that the refund which may become payable will be governed by the provisions of the State Act. In the instant case, since the very order which directed the deposit itself has directed the refund with 18% interest, we have no doubt in holding the said order as to mean that the refund should be made with interest at the rate of 18% from the date on which the amount was deposited pursuant to the order of the High Court dated 15.3.1995.

8. For the reasons stated above, this appeal succeeds and the same is allowed.