(1994) 04 OHC CK 0037

In the Orissa High Court

Case No : O.J.C. No. 116 of 1993

Tata Robins Fraser Ltd. and Another — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 25-04-1994

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 14C, 14D
Orissa Sales Tax Rules, 1947 — Rule 40

Citation : (1994) 2 OLR 158

Hon'ble Judges : S.K. Mohanty, J;A. Pasayat, J

Bench : Division Bench

Advocate : Ashok, K. Parija and Sarada P. Sarangi, for the Appellant; Sr. Standing Counsel and Addl. Standing Counsel (Commercial Taxes), for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Claim of interest made by the petitioner in terms of Sea. 14-C of the Orissa Sales-tax Act, 1947 (in short, the ''Act'') read with Rule 40 of the Orissa Sales-tax Rules, 1947 (in short, the Rules'') having been rejected by the authorities, this Court has been moved for interference.

2. Fact situation is almost undisputed. Petitioner was assessed to sales-tax for the assessment years 1988-89 and 1939-90. On the basis of orders of assessment dated 2-8-1991, petitioner wss found entitled to refund of Rs. 16,288.38 and Rs. 14,51,919.00 respectively. Refund applications were filed on 31-8-1991 and the amounts in question were paid to petitionar on 7-4-1992, vide refund payment order-cum-payment advice Nos. 1351 and 1353 of the said date. After receipt of refund vouchers. Sales-tax Officer, Rourkeia 1 Circle (opp party No. 3) was moved by petitioner for payment of interest. Interest was claimed on the total amount of Rs. 14,63,226.00 In terms of Section 14-C of the Act read with Rule 40 of the Rules, on the ground that payment having been made beyond 90 days it was entitled to interest at the rate of 18% for the first

ninety days and at the rate of 24% thereafter. According to it, applications for refund were filed on 31-8-1991, and the refund payment order was issued on 7-4-1992 and therefore interest was payable. Since no action was taken, petitioner filed applications before the Commissioner of Sales- tax, Orissa (opp. party No 2) on 28-7-1992 with a prayer to grant statutory interest. This Court was moved for a direction to the Commissioner to dispose of the applications for grant of interest. By order dated 20-8-1932, in OJC No. 5728 of 1992 this Court directed the Commissioner to dispose of petitioner''s applications, if pending within three months from date of receipt of the order. Another application was filed by the petitioner on 26-3-1992 along with a copy of this Court''s order. By the impugned order dated 12-11-1992, the Additional Commissioner of Sales-tax has rejected the application on the ground that Sec, 14-D deals with power of the Commissioner to withhold refund, and everv delay can be construed to be a period during which the reiund is withneld u/s 14-D of the Act, and Section 14-C cannot Junction independently of Sec, 14-D. The exprassion "further proceedings under the Act'''' refers to consideration of papers from stage to stage. Since the dispute is relating to legality of conclusions of the Additional Commissioner it is appropriate quote the relevant portion:

"It may be mentioned here that under the OST Act the claim and grant of refund is a proceeding and because several records are to be put together before merit of a claim is properly appreciated and such records are available not in one office but sometimes in different offices and in connection with different proceedings, to get them together as and when required is not possible, Moreover, delegation of power to refund has been. mad" to different authorities by stipulating financial limitations, the CTO can refund up to Rs. 5,000.00, the AOCT up to Rs, 10,000,00, the Addl. CCT upto Rs. 20,000,00 and the Commissioner can grant refund for any amount without restri- ction. This scheme of delegation is also causing delay. It may, however, be seen that the passing of the papers from stage to stage is in pursuance of "further proceedings under the Act*. Therefore, every delay can be construed to bo a period curing which the refund is withheld u/s 14-D of the OST Act. Sec, 14-C cannot function independently of Section 14 D and therefore, Commissioner can perhaps order the period of delay for which interest has been claimed by the petitioner as a period during which the refund was withheld u/s 14-D of the OST Act. in the premises, the period of alleged delay is treated as a period during which the refund is withheld u/s 14-D of the OST Act and hence, no interest is payable u/s s 14-C of the OST Act as claimed."

3. Learned counsel for petitioner submitted that conclusions of the Additional Commissioner are utterly fallacious and the petitioner is entitled to interest. Counter affidavit has been filed on behalf of the Commissioner of Sales-tax and the Sales-tax Officer, and the learned counsel for the Revenue with reference to that has supported order of the Additional Commissioner.

4. Sections 14-C and 14-0 are relevant for the purpose of appreciating rival contentions. They read as follows ;

"14-C, Payment of interest on refundable amount- Amounts refundable u/s 14, if not refunded within ninety days from the date of receipt of the application in the behalf from the dealer, shall carry interest at the rate of eighteen per cent per annum for the first ninety days and thereafter at the rate of twenty-lour per cent per annum, with effect from the date of expiry or the period specified above.

14-D. Power to withhold refund in certain cases- When an order giving rise to a refund is subject-matter of an appeal or further proceeding under this Act, the Commissioner may, if he is of the opinion that the grant of refund is likely to adversely affect the revenue, withhold the refund till such time as he deems proper."

A bare reading of the provisions shows that the conclusions of the Additional Commissioner are f''ivolous and utterly fallacious Section 14-D has no application to the facts of the case at hand, because no order giving rise to the refund was subject matter of any appeal or further proceedings under the Act. The expression ''further proceedings of the Act'' appearing in Section 14-D cannot by any stretch of imagination have any relevance so far as disposal of the application for refund is concerned, Section 14-D comes into operation where the grant of interest is likely to adversely affect the revenue, and order giving rise to a refund is the Subject-matter of an appeal or further proceedings. The conclusion of the Additional Commissioner that passing of papers from stage to stage is in pursuance of further proceedings under the Act shows complete non-application of mind, and if we may say so, reflects'' complete ignorance of the statutory provisions. Use of the expression ''can perhaps'' in the quoted portion of the Additional Commissioner''s order shows that the Additional Commissioner was not sure whether such an action is permissible. Conclusions are indefensible, and accordingly we quash the order of the Additional Commissioner vide Annexure-6. Taxing authorities are supposed to be watch-dogs of the Revenue and not blood-hounds, Unfortunately Additional Commissioner has come to conclusions, which reflect undesirable anxiety to deny an assessee, what was legitimately due to it. We direct that interest due to the petitioner be paid forthwith, not later than one month from today. Since loss to the State Excgeqyer gas been caysed ib account of inapt handling by the authorities, we direct government in the finance Department to fix up responsibility and take appropriate actin against the erring offficers.

The writ application is accordingly allowed with cost. Hearing fee is assessed at Rs. 500/-(five hundred).

S.K. Mohanty, J.

I agree.

