

COMMISSIONER, COMMERCIAL AND SALES TAXES AND ORS. A

v.

M/S. ORIENT PAPER MILLS AND ANR.

FEBRUARY 17, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.] B

*Orissa Sales Tax Act, 1947; Section 14(c):*

*Sales Tax Assessment—Raising of extra demands—Appeal rejected by Revenue—Appeal to Tribunal—Authority issuing notice of attachment against assessee during pendency of the appeal before the Tribunal—Challenge to—Vacating the notice of attachment, High Court directed assessee to deposit certain amount and that assessee could claim refund, if any, due to him with interest thereon—Assessee filing an application for stay before the authority concerned—Authority directed assessee to deposit certain amount—Challenge to—High Court affirmed the order, however, reduced the amount to be deposited—Tribunal disposed of the pending appeal by remanding the matter to authority concerned—Authority directed to refund entire amount deposited by the assessee—Refund of amount along with interest by the authority—Rate of interest—Challenge to—High Court directed that in the absence of any specific direction of payment of interest by the High Court, the assessee was entitled to claim interest as per provisions of section 14(c) of the Act—Cross appeals—Held: Taking into consideration usual rate of interest being granted in cases involving refund of money, interest @ 12% on the sum deposited earlier would be appropriate—However, on the sum deposited later, there was no direction by the High Court as to refund or about the rate of interest—Under the circumstances, interest @ 9% would be appropriate—Directions issued.* C D E F

**Respondent-assessee was a dealer registered under the Orissa Sales Tax Act. Sales Tax Officer made assessment for the assessment year 1993-94 and rejected the books of accounts, raising an extra demand of tax. Assessee unsuccessfully filed an appeal before the authority concerned and later filed an appeal before the Tribunal. During pendency of appeal before the Tribunal, a notice of attachment was issued by the authority. Assessee challenged it before the High Court. Disposing of the Writ Petition, High** G H

A Court directed the assessee to deposit a sum of Rs. 50 lakhs, and that the assessee could claim refund, if entitled, with interest thereon. Assessee filed an application for stay which was rejected by the authority directing the assessee to deposit a further sum of Rupees one crore. Assessee challenged it, High Court directed assessee to deposit further sum of Rupees 25 lakhs only.

B  
C The Tribunal disposed of the pending appeal by remanding the matter to the authority. The authority re-considered the matter and directed refund of the entire amount deposited. Assessee claimed refund of amount deposited along with interest of Rs. 73,73,424/- against the interest of Rs. 31,16,438 calculated by the authority. Assessee challenged it before the High Court. High Court directed that in the absence of specific directions for payment of interest, the assessee was entitled to claim interest as per provisions of law. Hence the cross appeals.

D C It was contended for the Revenue that the provisions of Section 14-C of the Act has no application to the facts of the case; and that since no amount was refundable before completion of the fresh assessment, the question of granting any interest thereon would not arise.

E On behalf of the respondent-assessee, it was submitted that since the Court has already granted interest and did not withdraw it, Revenue could not refuse to pay interest; and that since the Court, as an interim measure, directed to deposit and also stipulated refund of the sum deposited in a particular manner and for payment of interest thereon, it in no way should affect a party.

F Disposing of the appeals, the Court

G HELD: 1.1. Taking note of the usual rate of interest which is granted in cases involving refund of money, 12% interest in terms of the High Court's order on the sum of Rs. 50,000 paid pursuant to its earlier order dated 11.3.1996 would be appropriate in the absence of any specific rate of interest stipulated by the Court, as a condition of the order itself. So far as the sum of Rs. 25,00,00 is concerned, there was no stipulation made regarding refund, much less, about the rate of interest. But Revenue seems to have erroneously proceeded on the basis as if it was to some extent covered by the earlier order of the High Court. [457-F]

H 1.2. This Court observed in *Tata Refractories Ltd.'s* case that where

no interest is stipulated in the High Court's order, the statutory provisions are applicable. At the same time it cannot be lost sight of that no order varying the order of Commissioner granting interest is in operation. That being so, on the peculiar circumstances of the case grant of interest at the rate of 9% would be appropriate. Calculated on that basis there would be hardly any amount payable or refundable so far as the revenue and the assessee are concerned. [457-H; 458-A]

*Tata Refractories Ltd. and Anr. v. Sales Tax Officer and Ors.*, [2003] 1 SCC 65, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1084 of 2004.

From the Judgment and Order dated 9.10.2001 of the Orissa High Court in O.J.C. No. 13435 of 2000.

WITH

C.A. No. 1085 of 2004.

T.R. Andhyarujina, Dinesh Dwivedi, Mrs. Kirti Renu Mishra, P.N. Gupta, Sunil Kr. Jain and Bibek Mohanti for the appearing parties.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** Leave granted.

These two appeals are inter-linked being directed against the judgment of the Orissa High Court in Writ Petition No. OJC 13435/2000. The writ application was filed by Orient Papers Mills (hereinafter referred to as the 'assessee') under Articles 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution') for a direction to Sales Tax Officer Sambalapur III Circle, Jharsuguda and the Commissioner of Sales Tax, Orissa to refund the sales tax collected along with interest. The Sales Tax Officer (opposite party No.1) in the writ petition had calculated the interest payable to the assessee at Rs. 31.16.438. According to the assessee the amount payable was Rs. 73,73,424.

Background facts which led to filing of the writ petition as described therein are as follows:

- A The assessee is a dealer registered under the Orissa Sales Tax Act, 1947 (in short the 'Act'). For the assessment year 1993-94, the Sales Tax officer rejected the books of accounts of the assessee and raised a demand of Rs. 33,48,97,000. resulting in an extra demand of Rs. 3,04,48,546. The assessee filed First Appeal before the Assistant Commissioner of Sales Tax, and being unsuccessful filed Second Appeal before Orrisa Sales Tax Tribunal (in short the 'Tribunal').
- B When the matter was pending before the Tribunal, a notice of attachment was issued by the Sales Tax Officer, Questioning the notice, the assessee filed a writ petition before the Orissa High Court which was registered as OJC 1969/1996. By order dated 11.3.1996 the High Court vacated attachment and directed the assessee to deposit a sum of Rupees 50
- C lakhs on or before 25.3.1996 without prejudice and subject to result of the writ petition. It was made clear in the order that if the assessee was entitled to any refund, it can ask for the same together with interest which would be calculated on and from the date of deposit and not from the date of formal application for refund. It may be noted here that the assessee had moved an application for stay before the Commissioner of Sales Tax who had directed
- D the assessee to deposit a sum of rupees one crore by 15.9.1996. Against that order the assessee filed a writ petition OJC No. 9735/1996. By order dated 17.9.1996 taking into account the fact that the assessee had already deposited Rupees 50 lakhs pursuant to the directions given in the other writ petition, the High Court directed deposit of a further sum of Rupees 25 lakhs without
- E prejudice to the claim involved. The payment was to be made by 23.9.1996 which was done. The Second Appeal was disposed of by the Tribunal remanding the matter to the Assistant Commissioner. Against the said order the State Government filed an application before the Tribunal seeking a reference to the High Court but the same was rejected as according to it no question of law was involved. After remand, the Assistant Commissioner re-
- F considered the matter and directed refund of Rupees 75 lakhs by its order dated 1.7.2000. An application for refund was filed by the assessee on 24.7.2000. In the application for refund, the assessee claimed Rs. 73,73,424 as interest. But according to the Sales Tax Officer the amount payable was only Rs. 31,16,438 calculating the interest from the dates of deposit.
- G According to the assessee the method of calculation done was wrong. Their claim was that they are entitled to interest @18% for the first 90 days and @ 24% thereafter from the date of deposit of Rs. 50,00,000 and Rs. 25,00,000 making the total of Rs. 75,00,000. Reference was made to Section 14-C of the Act to substantiate the claim. Though there was no specific
- H direction in the order directing deposit of Rs. 25,00,000 according to the

assessee it was in the nature of continuance of the earlier order, and stipulation regarding grant of interest made in the earlier order dated 11.3.1996 would also apply to the subsequent order dated 17.9.1996.

The stand of the revenue on the other hand was that in terms of Full Bench decision of the High Court in OJC No. 9087/1997 disposed of 16.10.2000, interest on refund of deposit made pursuant to the directions of the Court has to be from such date, and at such rates as may be directed by the Court. As in the present case, there was no direction about the rate at which interest was to be payable, the Commissioner had allowed a reasonable rate of 10%. Reference was made to the amendment of Section 14-C that with effect from 3.10.2000 it was submitted the rate indicated in the provision was to apply though the refund application was made on 24.7.2000. It was submitted that by mistake interest had been granted on the sum of Rs.25,00,000 though the Court had not stipulated grant of any interest in its order dated 17.9.1996.

The High Court was of the view that the use of the expression "the date of formal application" used in the order dated 11.3.1996 made the position clear that the same was with reference to Section 14-C of the Act which prior to its amendment in 2000 read as follows.

*"14-C: Payment of interest on refundable amount.*

Amounts refundable under Section 14. if not refunded within ninety days from the date of receipt of the application in that 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 four percent annum, with effect from the date of expiry of the period specified above."

The High Court was of the view that interest was payable on the sum of Rs. 50,00,000 as provided in Section 14-C prior to its amendment, at the rate of 18% for the first 90 days and at the rate of 24% thereafter from the date of deposit as the amount was refunded prior to the amendment of Section 14-C on 3.10.2000. So far as the Balance of Rs. 25,00,000 is concerned it was directed that since there was no specific direction for payment of interest the assessee was entitled to interest at the rate of 18% for the first 90 days and at the rate of 24% thereafter from the date of making the formal application for refund.

A While the revenue has questioned correctness of the judgment in SLP(C) No. 1513/2002, the assessee has filed the connected SLP(C)No. 1898/2002 making a grievance that in respect of the sum of Rs. 25,00,000 also the interest should have been directed to be paid from the date of deposit.

B Mr. T.R. Andhyarujina, learned senior counsel appearing for the revenue has submitted that the High Court has erroneously applied the provisions of Section 14-C to the facts of the case. The said provision has no application to the facts of the case. In any event the High Court has not analysed the said provision in the background of other provisions of the Act which in clear terms provided that a claim for refund of the amount cannot be made when  
C there is an order of remand for fresh assessment. Even before the amendment, the expression used was “amounts refundable under Section 14” as no amount was refundable before completion of the fresh assessment pursuant to the order of remand, and it had not attained finality the question of granting any interest would not arise. As the interest was directed to be paid pursuant to the order of the High Court, the rates prescribed in Section 14-C would have  
D no application.

Per contra, learned counsel for the respondents submitted that even when an amount is paid pursuant to the directions of the Courts, the bar, if any, contained on refund would have no application. Without any order withdrawing interest already granted, it is not open to the revenue to say that  
E interest was not payable. When a direction for deposit was made and terms of refund were indicated by the Court, that certainly should not in any way run counter to any specific provision of the statute. But when the Court as an interim measure directs deposit and stipulates refund in a particular manner, and for payment of interest, it in no way should affect a party. It is a well  
F known maxim in law that no person should be affected or allowed to suffer by an order passed by a Court of law. Even if it is accepted that the direction of the Court of law appears to be at variance with the statutory provision while exercising writ jurisdiction, as an equitable measure the Court can pass such order as it may deem proper, but in no way going beyond the permissible extent of exercising the jurisdiction. As was observed by this Court in *Tata Refractories Ltd. and Anr. v. Sales Tax Officer and Ors.*, [2003] 1 SCC 65  
G while dealing with an identical dispute it was held as follows:

H “It is to be noted that the order of the High Court in the earlier writ petition namely, OJC No. 1200 of 1995 was made by the High Court in the exercise of its power under Articles 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 the 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 Articles 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 not 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".

The High Court erroneously applied the import of Section 14-C to the facts of the present case.

In our considered view, taking note of the usual rate of interest which is granted in cases involving refund of money, 12% interest in terms of the High Court's order on the sum of Rs. 50,00,000 paid pursuant to the order dated 11.3.1996 would be appropriate in the absence of any specific rate of interest stipulated by the Court itself, as a condition of the order itself. So far as the sum of Rs. 25,00,000 is concerned, admittedly, there was no stipulation made regarding refund, much less, about the rate of interest. But the Commissioner seems to have erroneously proceeded on the basis as if it was to some extent covered by the earlier order of the High Court. As observed by this Court in *Tata Refractories Ltd.'s* case (supra) where no interest is stipulated in the High Court's order the statutory provisions are applicable. At the same time it cannot be lost sight of that no order varying the order of Commissioner granting interest is in operation. That being so, on the peculiar

A circumstances of the case grant of interest at the rate of 9% would be appropriate. Calculated on that basis there would be hardly any amount payable or refundable so far as the revenue and the assessee are concerned when the amount paid as interest i.e. Rs. 31,16,438 is taken note of. Therefore, we dispose of both the appeals by directing that the assessee shall not be entitled to any additional amount as and by way of interest, and the revenue at the same time shall not be entitled to recover anything out of interest of Rs. 31,16,438 already paid. The appeals are finally disposed of. There shall be no order as to costs.

S.K.S.

Appeals disposed of.