

WP(C) 5943/2011

BEFORE

HON'BLE THE CHIEF JUSTICE MR. A.K. GOEL

HON'BLE MR. JUSTICE UJJAL BHUYAN

(A.K.Goel, C.J.)

This order will dispose of W.P.(C) No.5943 of 2011, W.P.(C) No.5941 of 2011 and W.P.(C) No.5840 of 2011 as the issue raised in all the petitions is the same except the assessment year and period of delay.

2. In W.P.(C) No.5840 of 2011, challenge is to order dated 3.8.2011 and a direction is sought for payment of interest on the refund, which was due as per provisions of Section 32 of the Assam General Sales Tax Act, 1993. Case of the petitioner is that it is manufacturing chemical from tea waste and for that purpose tea waste is purchased and tax is paid under Section 7(2) of the Act. A scheme has been framed under provisions of Section 9(4) of the Act called Assam Industries (Sales Tax Concession) Scheme, 1997 which provides for refund of tax paid to the eligible units, on application being filed within 90 days from the date of expiry of the year to which refund relates. Refund is governed by Section 30 read with Section 32 of the Act.

3. The petitioner, being an eligible unit, made an application for refund in accordance with the said scheme. Though the petitioner was found to be eligible and refund was made, since it was after 5 years 9 months and 28 days, the petitioner claimed interest. The Superintendent of Taxes recommended that interest be paid, but the Commissioner of Taxes vide impugned order dated 3.8.2011 rejected the said claim as follows:-

The Deputy Commissioner of Taxes, Guwahati Zone-B forwarded a proposal vide his letter No.GE-78/Pt./Zoon-B/84-85/2074 dt. 07/01/2011 originally received from Superintendent of Taxes, Nalbari for granting interest amounting to Rs.9,79,613/- to M/s Ahinsha Chemical Ltd., against previously refunded amount of tax suffered by it on purchases of raw materials during the year 2002-2003, 2003-2004 and 2004-2005. After examination of relevant provisions and various facts at this level, it is found that the initial claim of refund of tax suffered on purchase of raw material arose as per substantive provision of law incorporated in para 11(a) of the Assam Industrial (Sales Tax Concessions) Scheme, 1997 which provided that a holder of certificate of authorization under it would be entitled to the benefit of full Sales tax relief in the purchases of raw material and that such relief could be available to him by way of refund. On the other hand Section 30 of the Assam General Sales Tax Act, 1993 and the Rules made thereunder do not contain any provision of granting refund of tax suffered on purchase of raw materials by an eligible Industrial Unit. The para 11(a) of the 1997 Scheme although laid down that such refund shall be governed by the provisions of Section 30 of the Assam General Sales Tax Act, 1993 and the Rules made thereunder, the substantive law applicable in the case of granting refund can be found only in para 11(a) of the 1997 Scheme and not in section 30 of the Assam General Sales Tax Act, 1993 and the rules made thereunder which clearly have been adopted by the 1997 Scheme only for the procedural purpose of granting such refund. The Govt. notification No.FTX.65/97/115 dated 20/09/1997 notifying the Assam Industries (Sales Tax Concession) Scheme 1997 has conspicuously omitted the provisions of Section 32 of the Assam General Sales Tax Act, 1993 on the basis of which a claim for interest on refund can accrue to a dealer. Therefore, the present claim of interest of Rs.97,9623/- is found not admissible under relevant provisions of the applicable law. Inform the dealer accordingly.

4. Aggrieved thereby, this petition has been filed.

5. We have heard learned counsel for the parties.

6. Since the issue is governed by Section 32, the same is reproduced below :-

32. Interest on Refund - If for reasons of delay, a refund, being other than a refund under sub-section (2) of Section 30, due to a dealer under Section 30 is not made within ninety days of such refund being due, the dealer shall be entitled to receive simple interest from the State Government at the rate of one per centum per month on the amount of refund.

(2) Refund under this Act shall be deemed to be due -

(a) in case where the tax assessed has been reduced on appeal, revision etc. from the date of order of the appellate/revisional authority comes to the knowledge of the Assessing Officer;

(b) in other cases, on the date an application for refund is made by the party claiming the refund;

(3) If as a result of any proceedings under this Act the amount in respect of which interest is payable by the State Government under the forgoing provisions is varied, the Assessing Officer shall correspondingly enhance or reduce, as the case may be, the interest so payable.

7. A perusal of the above shows that refund is required to be made within 90 days and if refund is made beyond 90 days of the refund if due and if the same is delayed, simple interest at the rate of 1 per centum per month is payable. The provision makes no difference whether the refund is on account of assessment order or on account of the provisions of the scheme. Object of the provision is to restore loss caused by the delay in denial of use of money. Thus, interest is compensatory and equitable. The provision cannot be interpreted to reject an equitable and compensatory claim clearly covered under the said statutory provision. In *South Eastern Coalfields Ltd. Vs. State of M.P. and others*, (2003) 8 SCC 648, it was observed :-

21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (see *Chitty on Contracts*, 1999 Edn., Vol.II, Part 38-248, at p.712). Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.

8. We are, thus, of the view that the impugned order is against the plain statutory provision of Section 32 and the same is accordingly set aside. Claim for interest due to the petitioner be worked out in accordance with Section 32 of the Act within three months from the date of this order. The petitioner may appear before the concerned Superintendent of Taxes for further proceedings on December 12, 2012.

Writ petitions stand allowed accordingly.