

CASE NO.:
Appeal (civil) 5648 of 2006

PETITIONER:
State of Punjab and others

RESPONDENT:
M/s Atul Fasteners Limited

DATE OF JUDGMENT: 30/04/2007

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
J U D G M E N T

KAPADIA, J.

On 20.12.2001 Deferment Certificate was granted by the Sales Tax Department to the respondent-assessee for the period April 30, 1997 to 29th April 2004. Under that Certificate the quantum of benefit of tax deferment was Rs.62,47,500/-. The said certificate stated that the assessee was entitled to the benefit of tax deferment subject to the maximum of Rs.62,47,500/-. The assessee had commenced its commercial production on April 30, 1997. The assessee had applied to the Industries Department for grant of Eligibility Certificate. That Certificate was however granted only on 13.9.2001 for 84 months (7 years) commencing from April 30, 1997. The Deferment Certificate was given by the Sales Tax Department based on the Eligibility Certificate only on 21.12.2001. After the grant of Eligibility Certificate on 21.12.2001 the assessee availed the deferment of tax for the period from 1.10.2001 to 29.4.2004 amounting to Rs.33,48,600, as against its total entitlement of Rs.62,47,500/-. The case of the assessee is that during the period 30.4.1997 to 30.9.2001 it had deposited/paid an amount of Rs.42,62,807/-. Consequently, assessee seeks refund of the tax amount paid by him during the period 30.4.1997 to 29.9.2001. This claim has been granted by the impugned judgment. Hence this civil appeal by the Department.

The short question which arises for determination in this case is whether the Department was liable to pay interest @ 18% p.a. on Rs. 42,62,807/- from 21.12.2001 till refund/adjustment.

At the outset it may be noted that the entitlement of the assessee to the grant of benefit of tax deferment is not in issue. The quantum of the benefit is not in dispute. Similarly, the period commencing from 30.4.1997 to 29.4.2004 is also not in dispute. Under the Deferment Scheme read with Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, on expiry of 7 years (84 months) i.e. on 29.4.2004, the assessee who was allowed to retain the tax collected by it on behalf of the Department had to repay it in 3 instalments. In the present case the first instalment of repayment by the assessee became due on 29.4.2004, the second instalment became due on 28.4.2005 and the third instalment became due on 28.4.2006. The assessee had filed a writ petition in 2004 for refund.

In our view the High Court had erred in granting interest @ 18% p.a. on Rs. 42,62,807/- with effect from 21.12.2001 till payment. We have examined the Deferment Scheme as well as the said 1991 Rules framed by the Government under the Sales Tax law. There is no provision for grant of interest. Before us on instructions learned advocate appearing for the State fairly stated that the State is in appeal against the grant of interest @ 18%. The State is not denying the grant of refund by adjustment. Therefore, the only question which we are required to consider in this civil appeal is whether the assessee was entitled to interest @ 18% per annum from 20/21 December 2001 upto the date of refund/adjustment.

Interest is admissible in a tax enactment on two grounds namely 'Agreement' or 'Statutory Provision'. Interest cannot be granted on the basis of equity under the tax enactment, particularly under statutory schemes for grant of exemption/deferment. It is well settled that exemption schemes have to be given strict interpretation. Applying the above test the High Court has erred in granting interest @ 18% per annum for the aforesaid period. Assessee has relied upon the provision of Section 12 of Punjab General Sales Tax Act, 1948 for refund. That Section states that 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 if the amount of tax paid was in excess of the amount due under the Act. Section 12 is preceded by Section 11 which deals with assessment of tax. In the present case we are not concerned with regular assessment of tax. The assessment proceedings under the Act proceeds on the basis that if the tax paid by the dealer on his returns (declared turn over) is more than the tax assessed by the Department then the assessee would be entitled to refund of the excess amount with interest. In the present case we are concerned with the Deferment Scheme and the Deferment Rules, 1991 framed under Punjab General Sales Tax Act, 1948. Neither the Scheme nor the Rules provides for interest. In the circumstances the High Court has erred in granting interest @ 18% for the aforesaid period. We are not inclined to grant interest on the basis of the principle enunciated in the judgment of the Delhi High Court in the case of Redihot Electricals v. Union of India and others [1989 (75) STC 257] on which the assessee has placed reliance. In the present case there is no collection of tax. In the present case the assessee wanted to avoid payment of penalty during the period when its application for Eligibility Certificate was pending before the Industries Department. In fact under the Deferment Rules of 1991 an applicant is required to calculate his entitlement on the basis of notional tax liability for the year in question. (See clause 'j' of Form ST (D & E) -1). Therefore, in the present case the assessee has paid the tax under the Sales Tax Act in order to avoid penalty. The question of paying interest will also not arise because sales tax is an indirect tax. It is collected by the assessee from its customers. The incidence of tax falls not on the assessee but on its customers. The assessee collects the sales tax from its customers as a part of sale price. It forms part of his turn over for the stipulated period. Under the Scheme the liability to pay tax by the assessee accrues each year but the payment of tax is deferred. On expiry of seven years the assessee has to pay back the tax collected by it during 7 years. It is a sort of a loan given by the State to the assessee so that the assessee can use the tax amount to meet its working capital requirement. As stated the liability of the respondent-assessee accrued each year, therefore, there is no question of the Department paying

interest @ 18% on the tax collected by the assessee during the aforestated period. The tax was collected by the assessee from its customers as an agent for the Government. The assessee is allowed to retain that amount which has accrued to the account of the State Government. Therefore, the question of payment of interest under the Deferment Scheme does not arise. This reasoning appears to be the basis for the Scheme for not providing for the payment of interest.

Before concluding we may state that interest @ 18% on Rs. 42 lacs (approx.) for the period 21.12.2001 to 20.12.2007 would come to Rs. 43 lacs (approx.). In other words, the respondent which is now under the liability to repay wants to repay out of Interest.

For the aforestated reasons we allow this appeal in part by setting aside the directions of the High Court to the State to refund the amount of the tax collected from 30.4.1997 to 20/21.12.2001 with interest @ 18% from 21.12.2001 upto the date of refund/adjustment. We make it clear that the assessee would be entitled to refund of the tax collected during the aforestated period from 30.4.1997 to 20/21.12.2001. However, that would be without interest. Accordingly, the appeal is partly allowed with no order as to costs.