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(2000) 01 AHC CK 0177

Allahabad High Court

Case No: Writ Petition 15 of 1997

Bharat Heavy Electricals Limited		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Jan. 13, 2000

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 â€" Section 29, 29(2), 8

Citation: (2000) 01 AHC CK 0177

Hon'ble Judges: S. Rafat Alam, J; M.C. Agarwal, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. By this petition, Petitioner claims the following relief:

(i) to issue a writ , order or direction, directing the Respondent No. 2 to refund the amount which is in excess of tax due after giving the benefit of

the T.D.S. certificates forthwith .

(ii) to issue a writ , order or direction which this Hon''ble court may deem fit and proper in the circumstances of the case .

The Petitioner is M/s Bharat Heavy Electricals Ltd., a Government of India Undertaking and that it had to come to this Court to seek refunds from

the Trade Tax Department, Government of U.P. reflects on the efficiency and sincerity of the officers in dealing with tax payers.

2. The Petitioner''s case briefly stated is that it executed contracts for the supply of power plant equipment and also engaged itself in the erection,

commissioning and fabrication of power plants. Under the provision of Section 8d of the U.P. Trade Tax Act, the contractees made deductions on

account of trade tax from the amounts payable to the Petitioner and on assessments being made for the years 1987-88,1988-89,1990-91,1991-

92 and 1992-93, the tax from the amounts payable to the Petitioner and on assessments being made for the years 1987-88,1988-89,1989-

90,1990-91,1991-92 and 1992-93,the tax deducted at sources was found to be refunded to the Petitioner. The Petitioner applied for refunds for

assessment years 1987-88,1988-89,on 19.9.94. The application for assessment years 1991-92 was made on 05.02.1996,for 1991-92 on

23.7.96 and for 1992-93 on 10.9.96 but the amounts were not refunded the total refund was of the order of Rs. 55,20,904.00 since the refunds

were not being granted, the Petitioner came to this Court for the aforesaid relief.

3. In the grounds it was inter ale stated that the Petitioner is entitled to interest on the delayed refunds @ 18% per annum.

4. A counter affidavit sworn by Sri G.R. Arya, Asstt. Commissioner (assessment) Trade Tax, Noida has been filed on behalf of the Respondents .

The affidavit does not disclose why an officer posted at Noida is filing the counter affidavit when the matter relates to the jurisdiction of Trade Tax

officer. Robertsganj, distt. Sonbhadra. It is admitted in the counter affidavit that the deductions were made u/s 8-d by the contractees from the

amounts payable to the Petitioner and in paragraph 5 of the counter affidavit it is specially admitted that the contractees had deposited the amount

with their respective assessing authorities. It is also admitted in paragraph 6 that on the assessment order having been passed in the case of the

Petitioner, it was entitled to refund then the counter affidavit goes on to state as under:

8. That in this regard the deponent states that for the assessment year 1987-88 the tax imposed on the 9Petitioner was Rs. 86,491/- as well as the

tax deposited by the contractee department which was deducted from the payment of the Petitioner wasRs.53,44,499/-hence the excess amount

deposited which was refundable to the Petitioner was of Rs. 52,58,008/- out of which a refund voucher of Rs. 43,37,834/- was handed over to

the Petitioner on 27.3.1997 and Rs. 4,10,365/- was refunded to the 8 Petitioner on 17.12.1997. Similarly the remaining amount of Rs. 5,09,809/-

was refunded to Petitioner on 24.7.1999. Therefore in the assessment year 1987-88 there is no refund due against the Petitioner.

9. That for the assessment year 1988-89 the total tax imposed on the Petitioner was Rs. 4,21,74,104/- Subsequently, the total tax payable by the

Petitioner was determined at Rs. 22,000/- , therefore, the excess amount deposited by the 8Petitioner was Rs. 9,53,048/- out of which Rs.

3,18,399/- has been refunded to the Petitioner on 27.3.1997, again Rs. 1,11,411/- has been refunded to the 9 Petitioner on 27.3.1999 again by

another voucher the remaining amount Rs. 5,23,238/-has been refunded to the Petitioner on23.7.1998. Therefore, for the assessment year 1988-

89 now there is no refund due against the Petitioner.

10. That for the assessment year 1989-90 the refund due to the Petitioner was Rs. 25,44,160/- out of which Rs. 1,87,310/- has been refunded to

the Petitioner on 30.4.1997 and Rs. 23,56,850/- has been refunded to the Petitioner on 24.7.1999 hence now there is no amount refundable to

the Petitioner for the assessment year 1989-90.

11. That similarly, for the assessment year 1990-91 refund due in favour of the Petitioner was of Rs. 28,99,861/- and the same has been refunded

to the Petitioner in the following manner.

Dated Amount

27.3.97 13,98,927/-

17.12.97/24.2.98 1,16,491/-

23.7.99 13,84,443/-

28,99,861/-

In this way, for the assessment year 1990-90 also now there is no amount refundable to the Petitioner.

12. That similarly, for the assessment year 1991-92 the refund due in favour of the Petitioner was Rs. 9,59,227.60 and the same has been

refunded to the Petitioner in following manner.;

Dated Amount

30.4.97 58,642/-

5.12.97 3,89,394/-

5.12.97 57,031/-

17.12.97 24,030/-

23.7.99 "4,30,130/-

9,59,227/-

Therefore, in the assessment year 1991-92 there is no refund due in favour of the Petitioner from the department.

13. That similarly for the assessment year 1992-93 refund due in favour of the Petitioner was Rs. 2,88,549/- and the said amount has been

refunded to the Petitioner in the following manner:

Dated Amount

27.3.97 1,61,900/-

17.12.97 96,735/-

23.7.99 29,914/-

2,88,549/-

Therefore, now there is no amount refundable to the Petitioner from the department for the year 1992-93.

14. That from the facts stated above, it is absolutely clear that from the assessment year 1987-88 to 1992-93 there is no amount refundable in

favour of the Petitioner from the department and the entire amount as it has been mentioned above, has been refunded to the Petitioner and the

same has been received by the Petitioner.

5. In the rejoinder affidavit it has been admitted that the amounts mentioned in counter affidavit have been refunded but without interest and that the

Petitioner is entitled to heavy cost and interest

6. Section 29 of the U.P. trade tax act deals with refund and Sub-section (20 provides for payment of interest on delayed refund . It reads as

under:

(2) If the amount to be refund in accordance with Sub-section (1) is not refunded as aforesaid within three months from the date of order or refund

passed by the Assessing authority ,. or as the case may be , from the date of receipt by him of the order of refund , if such order is passed by any

other competent authority or court, the dealer shall be entitled to simple interest on such amount at the rate of eighteen percent per annum from the

date of such order or, as the case may be, the date of receipt of such order of refund by the Assessing authority to the date of the refund:

Provided that for calculation of interest in respect of any period after the 26th day of may ,1975, this Sub-section shall have effect as if for the

words "six months the words "three months were substituted and for the words "six percent " the words twelve percent" were substituted .

7. (admittedly the refund have not been within three months from the date of the order of refund passed by the assessing authority of within three

months from the date of the receipt of the appellate/ rivisional order. Therefore, in terms of Sub-section (2) of Section 29, the Petitioner was

entitled to interest on the delayed refund . while refunding the amount ,it was the duty of the assessing officer to pay alongwith the principal amount

, the interest also that was payable in terms of Section 29(2) of the act.) "Refund " does not mean only return of the excess amount paid to

department by the assess but the interest payable on such amount is included in the refund.(see Suresh B. Jain v. P.K.B. Nayar (1992) 194 ITR

Bom. 148), but the calculating of interest has to be made from the relevant dates mention in Section 29(2) and the counter affidavit shows that the

amounts becoming due refund have been paid in instalments . Though the Petitioner prays for the grant of interest by an order of this Court in the

present writ petition , it is not possible for this Court to undertake that mathematical exercise particularly because the date of the commencement of

the interest is not specified. In the rejoinder affidavit that has been filed, the Petitioner has not undertaken that exercise to tell the court what are the

actual amount of interest claimed and how they have been calculated. Therefore so far as the claim before the assessing officer who shall pass

speaking orders thereon giving all the details that are required for calculation of interest u/s 29(2) of the Act.

8. This writ petition is, therefore, finally disposed of with a direction that the Petitioner may make its claims for interest before the assessing officer

and the assessing officer Respondent No. or his successor in office shall dispose of the claims within three months from the date of their receipt by

a speaking order specifying the relevant dates and amounts found payable on account of interest will be paid within a month of the making of the

order by the assessing officer failing which such amounts will carry further interest @ 18% from the date of the order till the date the refund order is

actually handed over to the Petitioner "s representative.

9. The Petitioner will get its costs of this writ petition which we assess at Rs. 10,000/-(ten thousand).