

(2004) 08 AP CK 0033

Andhra Pradesh High Court

Case No: Writ Petition No. 1872 of 2004

S.L.S. Textiles Ltd.

APPELLANT

Vs

Commercial Tax Officer-II and
Others

RESPONDENT

Date of Decision: Aug. 10, 2004

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 33B

Citation: (2005) 1 ALD 187 : (2005) 140 STC 251

Hon'ble Judges: S. Ananda Reddy, J; Bilal Nazki, J

Bench: Division Bench

Advocate: A.K. Jaiswal, for the Appellant; K. Raji Reddy, Special SC, for the Respondent

Final Decision: Allowed

Judgement

Bilal Nazki, J.

Heard learned Counsel for the parties. Counter has been filed and with the consent of the learned Counsel for the parties, the matter is disposed of at the stage of admission.

2. Controversy is very short. The petitioner was entitled to refund of an amount of Rs. 44,61,990/-. The order in tax revision case was passed on 8-11-2001 and refund was actually made on 7-8-2003. Writ petition has been filed seeking interest for the period for which the amount was not refunded contrary to the provisions of the A.P. General Sales Tax Act. The respondents claim that they had gone to the Supreme Court challenging the order of the High Court but the appeal was dismissed. They also claim that the papers relating to the case were received from the High Court and the Appellate Authority in December, 2002 and thereafter a notice had been given to the petitioner to file a claim within three months for refund and after it filed an application for refund, the payment was made within a period of six months. Sections 33, 33B and 33F lay down thus:

33. Refunds :-The assessing authority or the licensing authority, as the case may be, shall refund the tax or the licence fees, if any, paid, provisionally by an assessee or licensee for any particular period, if it is found to be in excess of the tax or the licence fees payable by him for the said period, or at the option of the assessee or licensee, adjust such excess towards any tax or licence fees due in respect of any other period:

Provided that the assessing or licensing authority, as the case may be, may first apply the excess paid in respect of any period towards the recovery of any amount, in respect of which a notice of demand may have been issued, and shall then refund the balance, if any.

33B Refund on appeal, etc :-Where as a result of any order passed in appeal or other proceedings under this Act, refund of any amount becomes due to the assessee or licensee, the assessing or licensing authority shall refund the amount to the assessee or licensee without his having to make any claim in that behalf, or adjust or apply, such amount as provided in Section 33.

33F Interest on refund where no claim need be made -(1) Where a refund is due to the assessee or licensee in pursuance of an order referred to in Section 33B and the assessing or the licensing authority does not grant the refund within a period of six months from the date of such order, the State Government shall pay to the assessee or the licensee simple interest at 12% per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

(2) Where the refund is withheld under the provisions of Section 33C the State Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appellate or further proceedings for the period commencing after the expiry of six months from the date of the order referred to in Section 33C to the date the refund is granted.

3. Therefore, the refund becomes payable within six months after an order is passed u/s 33B of the Act by an Appellate Authority or in any other proceedings under the Act. Since the tax revision case was filed before the High Court and such remedy was available under the Act, the date from which the time has to be reckoned would be the date on which High Court decided the matter. Admittedly, High Court decided the matter on 8-11-2001 and as such the refund had to be made before 8-5-2002. Once an order of refund is made in terms of Section 33B of the Act, there is no need for the petitioner to file an application for refund or to make any claim for refund which is also made clear by Section 33B itself. For these reasons, we hold that the petitioner was entitled to interest with effect from 8-5-2002 till 7-8-2003. Respondents shall workout the interest payable and pay the same to the petitioner as early as possible. Interest shall be calculated till the date payment is actually made.

4. It is submitted that after the High Court had passed an order, two matters were still pending before the Tribunal and following the order of the High Court the Tribunal passed an order of refund in those cases on 22-7-2002. In those cases also, for assessment years 1991-92 and 1992-93, interest has not been paid to the petitioner. We hold that the petitioner is entitled to interest from the date the order directing refund was passed till the payment was actually made, excluding a period of six months.

5. Writ petition is accordingly allowed. No costs.