

**HIGH COURT OF ORISSA: CUTTACK.**

**O.J.C. Nos.14041 & 14042 of 2001**

In the matter of applicationS under Articles 226 and 227 of the Constitution of India.

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| M/s.Bawa Trading Co          | .....     | Petitioner.       |
|                              | - Versus- |                   |
| Sales Tax Officer and others | .....     | Opposite Parties. |

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Counsel for Petitioner: M/s.Jagabandhu Sahoo, S.K.Mohanty & S.K.Burma

Counsel for Opp.Parties: Standing Counsel for Sales Tax Department

***PRESENT:***

***THE HONOURABLE KUMARI JUSTICE SANJU PANDA  
&  
THE HONOURABLE SHRI JUSTICE SUJIT NARAYAN PRASAD***

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**Date of hearing & Judgment : 06.01.2017**  
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**S. N. Prasad, J.** In both these writ applications, since common questions of law and fact are involved, they are heard together and are being disposed of by this common judgment.

2. In both the writ applications, the order passed under Section 12(a) of the Orissa Sales Tax Act, 1947 (in short, "the Act") has been challenged with a consequential direction upon the opposite parties to grant interest under Section 14-C of the Act as per the principles decided by this Court in OJC No. 4920 of 2000 vide order dated 14.9.2000 in case of M/s.

Hemanta Kumar Chhatoi v. Asst. Commissioner of Sales Tax, on the basis of the petitioner's first application for grant of refund.

3. The brief fact of the case is that the petitioner is a registered dealer under the provisions of the Act, assessed by opposite party no.1 under the provisions of Section 4 (4) of the Act for the assessment year 1993-94, determined the refundable amount to the tune of Rs.2,53,438/- in OJC No.14041 of 2001 and Rs.2,41,132/- in OJC No. 14042 of 2001, being the excess deposit of sales tax by the petitioner. Opposite party no.1 had initiated assessment proceeding and in the assessment order, the refundable amount was determined at Rs.2,25,038/- in OJC No.14041 of 2001 and Rs.2,13,592/- in OJC No. 14042 of 2001. The petitioner being aggrieved, filed appeal before opposite party no.2 and opposite party no.2 vide its order determined the refundable amount at Rs.2,25,038/- and Rs.2,34,292/- in OJC Nos. 14041 of 2001 and 14042 of 2001 respectively. The petitioner after the assessment, had submitted applications for refund, but no order has been passed for refund of the amount on the garb of pendency of reassessment under Section 12(a) of the Act. When the reassessment under Section 12(8) has been passed determining the refundable amount, the petitioner had again filed an application afresh for refund of the amount along with interest. It is the case of the petitioner that the amount has been refunded, but interest has not been paid while it is entitled to get the interest from the date of first application as per the statutory provision.

4. Per contra, learned counsel representing the Revenue has vehemently opposed the prayer made on behalf of the petitioner by submitting that interest cannot be paid from the date of first application submitted after the order of assessment, rather interest can only be paid after the assessment would finally be settled. In these cases, although the petitioner is claiming that it is entitled to get interest over the amount, which has been refunded from the date of first application, the same is not sustainable in view of the fact that there is an order for reassessment to be initiated under Section 12(8) of the Act, which itself suggests that the assessee, the petitioner herein, had not submitted its returns properly and that is the reason the authorities have gone into reassessment by exercising the power under Section 12(8) of the Act and in that situation since it is the fault on the part of the assessee in not submitting the returns by disclosing the true proceeds, which led the authorities for reassessment, hence, the petitioner cannot be awarded by making interest from the date of first application. He further submits that in view of the second proviso to Section 14, interest is not liable to be paid in case there is an order for reassessment.

5. Rebutting the argument regarding the statutory provision as contained in Section 14-C of the Act, learned Sr.counsel representing the petitioner has submitted that the said provision is not to disburse the amount of interest from the date of first application, rather the simple interpretation of the said statutory provision would be that when the assessment would be finally determined and came to a stop, then only it

can be determined that excess payment has been paid by the assessee in course of assessment and it is only thereafter, if the authorities would come to a conclusion that there is excess payment of return, then the amount can be refunded and in that situation, the assessee would be entitled to get the interest if the amount will not be refunded within the period of ninety days and if refunded within the period of ninety days, the assessee will not be entitled to get any interest and if not refunded within a period of ninety days, then it will be entitled to get interest from the date of order till the date of payment excluding the period of ninety days. In the light of this submission, it has been submitted by the learned counsel representing the Revenue that the authorities after determining the assessment on the basis of the provision as contained in Section 12(8) of the Act, has refunded the excess amount paid by the assessee within a period of ninety days in OJC No.14041 of 2001 while in OJC No. 14042 of 2001 since it has been paid after seven day from the date of expiry of ninety days, hence, interest for the 97 days has been paid to the assessee. Therefore, it has been submitted that the assessee is not entitled to get further interest.

6. We have heard the learned counsel for the parties and perused the documents available on record.

7. Before appreciating the rival submission advanced on behalf of the parties, we thought it proper to have a discussion with respect to the statutory provisions. It is necessary for the purpose of adjudication of the

issue involved in this case. The relevant provision for the purpose is the provision of Section 11, which contains for filing of returns requiring every registered dealer and every other dealer, who is liable to pay tax under the Act, or who may be required so to do by the Commissioner by notice served in the prescribed manner, shall furnish such returns, by such dates and to such authorities, as may be prescribed.

Section 12 contains a provision for assessment of tax, which stipulates that if the Commissioner is satisfied, without requiring the presence of a registered dealer or the production by him of any evidence, that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns. but however, if the Commissioner is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him on a date and at a place to be specified therein either to attend in person or to cause to be produced there any evidence on which such dealer may rely in support of such returns.

Section 12(8) contains a provision that if for any reason the turnover of a dealer for any period to which the Act applies has escaped assessment or has been under assessed or, where tax has been compounded when composition is not permissible under this Act and the rule made thereunder the Commissioner may at any time within 2(five

years) from the expiry of the year to which that period relates call for return under sub-section (1) of section 11 and may proceed to assess the amount of tax due from the dealer in the manner laid down in sub-section (5).

Section 14 contains a provision for return, which speaks that the Commissioner shall in the prescribed manner refund to a dealer applied in this behalf any amount of tax (penalty or interest) so paid by such dealer in excess of the amount due from him under the Act.

Section 14-C stipulates payment of interest on refundable amounts, which reads follows:

“Amounts refundable under section 14, if not refunded within ninety days from the date of receipt of an application in that behalf from the date of receipt of an application in that behalf from the dealer shall carry interest at the rate of six per cent per annum, with effect from the date of expiry of the period specified above.”

Section 14-D deals with power to withhold refund in certain cases, which reads as follows:

“Where an order giving rise to a refund is the subject matter of an appeal or further proceeding under this Act, the Commissioner may, if he is of the opinion that the grant of refund is likely to adversely affect the revenue, withhold the refund till such time as he deems proper.”

8. It is evident from the provision as contained in Section 14 of the Act that the amount would be refunded if paid excess of the amount over and above the amount of tax provided that no claim to refund of any tax penalty or interest paid under the Act shall be allowed unless it is made within

twenty-four months from the date on which the order of assessment or order imposing penalty as the case may be was passed or from the date of the final order passed on appeal, revision or reference in respect of the order earlier mentioned whichever period is later.

Further provided that no claim to refund of any tax or penalty or interest paid under the Act shall be allowed in cases where there is order for reassessment, until the reassessment is finalized.

Section 14-C provides for payment of interest on refundable amount under Section 14 of the Act, if not refunded within a period of ninety days from the date of receipt of the application in that behalf from the dealer, shall carry interest applicable.

9. The fact of the case in hand is that the assessee-petitioner in both the writ applications, had submitted its returns, which has been assessed by the Sales Tax Officer, Cuttack-I East Circle, Cuttack relating to the year 1993-94 raising refund of Rs.2,53,438/- in OJC No.14041 of 2001 and Rs.2,41,192/- in OJC No. 14042 of 2001 for the reason that the assessee in these cases were assessed originally under Section 12(4) of the Act for the year 1993-94, which has been subjected to reassessment under the provisions of Section 12(8) alleging the sale suppression on the basis of the reports submitted by the Sales Tax Officer (Intelligence) and completed assessment against which the appellant had preferred first appeal before the Asst. Commissioner of Sales Tax wherein the order of assessment has been confirmed. Again the Sales Tax Officer has received a fraud report

from the Sales Tax Officer (Vig.) Cuttack alleging purchase suppression of beetle nuts by the applicant, hence, the Sales Tax Officer initiated proceeding under Section 12(8) of the Act, in response to which the appellant appeared before him, the Sales Tax Officer is found to have confronted the alleged report to the assessee, who denied the allegation, determined at the time of assessment under Section 12(4) resulting reduction of refund amount against which the assessee being aggrieved filed first appeal. The first appellate authority has passed order by which after finalizing the reassessment, the fact of suppression having been proved, the amount of refund has been reduced. The assessee has filed an application for getting refund and accordingly, the amount has been refunded in favour of the assessee. Hence, the assessee- petitioner herein is not pressing its grievance regarding refund of the excess amount paid by it in view of the assessment. But however, its grievance is for payment of interest in view of the provisions as contained in Section 14-C of the Act, which according to the assessee, it is entitled to get from the date of the assessment order, but the same has been denied by the authorities on the plea that the refund is not maintainable since the same was subject to reassessment under the provisions of Section 12(8) of the Act. Moreover, refund has been made within the stipulated period as provided under Section 14-C.

10. The sole question fell for determination in these two cases is as to whether during the pendency of the reassessment order in exercise of the powers conferred under Section 12(8) of the Act, the assessee is

entitled to get interest from the date of first assessment order under Section 12(1) of the Act.

11. Learned counsel representing the petitioner in both the cases, apart from the factual aspects, has relied upon the unreported orders passed by this Court in OJC No. 4920 of 2000(**Sri Hemanta Kumar Chhatoi v. Asst.Commissioner of Sales Tax and others**) and WPC No. 5139 of 2002 (**Sri Radheshyam Agarwala v. Sales Tax Officer, Cuttack-I East Circle and another**) and the Full Bench judgment of this Court rendered in the case of **Ideal Industries Limited v. State of Orissa and others** rendered in OJC No. 9087 of 1997. While on the other hand, learned counsel representing the Revenue has relied upon the unreported judgment delivered by this Court in OJC No. 8920 of 1999 disposed of on 27.11.2015 (**M/s.Dabur India Ltd. V. Sales Tax Officer and another**) and reported judgment of the Apex Court in the case of **Commissioner, Commercial and Sales Taxes and others v. Orient Paper Mills and another**, 2004 (vol.135) STC at page 19.

12. The factual aspect, which is not in dispute in these cases is that the assessee had submitted its returns and subsequently, the authorities have exercised their power under Section 12(8) of the Act on the basis of the report of the Vigilance wing of the Sales Tax Department containing a report regarding suppression of material fact in showing the gross turn-over of the unit in question, as such, it cannot be said, on the basis of the fact of these cases, that the assessment has finally been concluded for the

particular year which is subject matter of assessment. Since the assessment can only be said to be concluded if on the basis of the returns submitted by the dealer it will be accepted subject to the condition that no decision/ order has been taken by the competent authority in this regard under the provisions of Section 12 (8) of the Act, which contains a provision for reassessment of the returns submitted by the dealer if found that there is suppression of material aspect, then within a period of five years from the date of submission of the return, it can be re-opened under the said provisions. Hence, the simple interpretation of the provision as contained in Section 12 if taken together along with all sub-sections is that the assessment for a particular period would be said to be concluded if there is no order for reassessment in exercise of the powers conferred under Section 12(8) of the Act. If that would be the situation and if it is found that the assessee have paid excess amount having been assessed in course of assessment and if not refunded in view of the provisions of Section 14 of the Act, then the assessee would be entitled to get interest if the amount would not be refunded within a period of ninety days and the interest will be payable after expiry of the period of ninety days inclusive of the period of ninety days.

13. The fact of the cases in hand is that the order of assessment initially has been accepted by the competent authority, but subsequently within the statutory period as provided under Section 12(8) of the Act, the order of reassessment has been directed to be conducted and accordingly, the authorities have finally passed the order reducing the amount of refund,

which goes to suggest that there was suppression of material facts in showing the return. It is gathered from the record of the case that the assessing authority has refunded the excess amount paid by the assessee within the statutory period and in one of the case it was after seven days of expiry of the period of ninety days, hence, the interest of ninety seven days has been paid.

14. Learned Sr.Counsel for the petitioner has relied upon the unreported judgment, i.e. one passed in OJC No. 4920 of 2000 by a coordinate Bench of this Court, but we after going through the said order have found that this Court has passed order holding therein that the refund flows from the first order, but we have not found from the said order as to whether the said case was also subjected to reassessment under the provisions of Section 12(8) of the Act and as such, the same cannot be said to be applicable to the facts and circumstances of the present case.

The judgment passed by this Court in WPC No. 5139 of 2002, relied upon by the petitioner, although has been passed in the pretext of the provisions of Section 12(8) of the Act, but in that case the order for refund was passed on 2.6.1998 and without refunding the amount, a proceeding under Section 12(8) of the Act has been initiated, but the factual aspect of that case is also distinct from the facts of these cases since in that case the order of reassessment has been passed by the revisional authority by appreciating the fact on merit, but here in the instant case, the order of reassessment under Section 12(8) of the Act has been passed on the basis

of a vigilance report submitted by the Vigilance Wing of the Sales Tax Department regarding misrepresentation and suppression of fact having been confronted to the assessee in course of submission of report and taking into consideration this aspect of the matter, the authorities have taken decision to resort to the provisions of Section 12(8) of the Act since it provides for re-assessment if there is any escape assessment or assessment based upon suppression of fact showing forged gross turn-over to be initiated within a period of five years from the date of assessment. Hence, the fact of the case of W.P.(C) No.5139 of 2002 is distinct from the fact of this case, hence not applicable.

The petitioner has also relied upon the un-reported judgment passed by the Full Bench of this Court in the case of Ideal Industries Ltd. V. State of Orissa (supra), but the issue, which has been raised in the instant case, pertains to disbursement of the amount of interest as provided under Section 14-C and the Full Bench of this Court has agreed with the statutory provisions that the assessee is liable to be paid interest in view of the provisions of Section 14-C, but what would be the date for disbursement of the amount of interest in the factual aspect of these case was not the subject matter in the said judgment. Hence, it is not applicable with the issue involved in these cases.

15. Learned counsel representing the Revenue has relied upon the judgment rendered in the case of **Dabur India Ltd. V. Sales Tax Officer** passed in OJC No. 8920 of 1999 disposed of on 27.11.2015, but the factual

aspect of the said case is also distinct since the order of reassessment was on the basis of suo motu revision by the Assistant Commissioner, but however, a coordinate Bench of this Court has directed to refund the amount from the date of the final assessment, i.e. after the assessment having been closed for that particular year.

So far as the judgment relied upon by the Revenue in the case of Orient Paper Mills and another (supra) is concerned, although the factual aspect of the said case is altogether different, the same is not relevant for the purpose of determination of the issue involved in this case.

16. There is no dispute about the settled proposition that the provision for charging interest is introduced in order to compensate for the loss occasioned to the revenue due to delay in payment of tax as also payment of interest on the excess payment of tax liability, the assessee is entitled to get refund of the amount along with interest, the purpose being is to compensate the assessee. It is also not in dispute that it is only after determination of the questions of fact, the Assessing Officer having the order holding that the assessee is liable to pay the tax, which he had not paid and vice versa, the assessee is also entitled to get refund of the amount after the final assessment having been made by the Assessing Officer, and if on final determination, found that the assessee is entitled to get refund, certainly the interest will be paid to compensate the assessee.

17. As we have observed herein-above that it is a case of misrepresentation and suppression of fact leading the authorities to resort

to the provisions of Section 12(8) of the Act and for that reason there was an order for reassessment and as such, the second proviso to Section 14 will be applicable, which provides that **no claim for refund of any tax, penalty or interest paid under this Act shall be allowed in cases where there is an order for reassessment, until the reassessment is finalized.**

The specific provision contained in the second proviso to Section 14 as referred to above, stipulates a condition that in course of pendency of reassessment, the amount would not be refunded either the excess amount paid, penalty or interest until the reassessment is finalized. This clarifies the intent of the legislation that till assessment for a particular year is finalized, the amount would not be refunded since the same is the subject matter of scrutiny and it is only after finalization of the assessment in its entirety for a particular assessment year, the question of payment of interest on the refundable amount as provided under Section 14-C would come.

18. Moreover, it is not a case herein that due to the power exercised by the appellate authority or the revisional authority in the suo motu revision, the order of reassessment has been made by appreciating the factual aspect of the assessee, but the fact here is that it is due to the misrepresentation and suppression of material fact in declaring the return, the order of reassessment has been passed under Section 12(8) of the Act and in course of the reassessment the fact of commission of suppression and misrepresentation has been proved.

19. The fact in the instant case is that the assessee has submitted its return, which was assessed, but subsequently it was found that there is some suppression in submission of return so far as it relates to gross turn-over of the assessee and as such, reassessment order has been directed to be initiated under the provisions of Section 12(8) of the Act. Thus, the assessee was conscious about the tax liability and intentionally he has not furnished proper return before the Assessing Officer and subsequently, it was found that the assessee has suppressed the material facts from the Assessing Officer in submission of return and accordingly, the amount of return has been reassessed and the refund amount has been reduced, which has never been disputed by the assessee, rather it has been accepted, which goes to suggest that there is suppression and misrepresentation by the assessee in submitting the return.

Taking into consideration this aspect of the matter, the assessee cannot be allowed to get the interest from the date of first order passed for refund of the excess amount, otherwise, there would be no meaning to go for reassessment, rather it will be said to be rewarding the assessee by making payment of interest from the date of first order showing refund of the excess amount even in the case of suppression and misrepresentation in submitting the return by the dealer.

20. Accordingly, we are of the considered view that the assessee would be entitled to get interest only when the assessment for the particular year would be concluded finally. Hence, the contention of the

petitioner that it is entitled to get interest from the date of first application, which has been filed by it after the first order of refund of amount has been passed, is not acceptable to this Court for the aforesaid reason. As has been submitted by the learned counsel for the parties, after the final order having been passed by the competent authority in exercise of the powers conferred under Section 12(8) of the Act, the amount has been refunded within the statutory period in OJC No.14041 of 2001 while in another case, i.e. OJC No.14042 of 2001 it has been paid after seven days from expiry of ninety days along with interest.

21. In view of the facts stated hereinabove, according to our considered view, the writ applications lack merit and accordingly dismissed.

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**S. N. Prasad, J.**

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**Sanju Panda, J.**

*Orissa High Court, Cuttack,  
Dated the 6<sup>th</sup> January, 2017/PKSahoo*