ITEM NO.15 COURT NO.12 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 43335/2023

(Arising out of impugned final judgment and order dated 26-04-2023 in WPT No. 3911/2022 passed by the High Court Of Jharkhand At Ranchi)

THE STATE OF JHARKHAND & ORS. Petitioner(s)

VERSUS

M/S KIRLOSKAR BROTHERS LIMITED Respondent(s)

(FOR ADMISSION and IA No.263580/2023-EXEMPTION FROM FILING O.T. and IA No.263579/2023-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Date : 04-01-2024 This petition was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Arunabh Chowdhury, Sr. Adv.
Ms. Pallavi Langar, AOR
Ms. Pragya Baghel, Adv.
Mr. Karma Dorjee, Adv.
Mr. Dechen, Adv.

For Respondent(s) Mr. Devashish Bharuka, AOR
Ms. Sarvshree, Adv.
Ms. Swati Mishra, Adv.
Ms. Pragya Choudhary, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

During the course of submissions, our attention was drawn to order dated 28.11.2023 passed by a Co-ordinate Bench of this Court in SLP (C) Diary No. 41193/2023, which reads as under -

"Delay condoned.
Having heard Mr. Arunabh Chowdhury, learned senior counsel for the petitioner(s) in the facts and circumstances of the case, we are not inclined to interfere with regard to the direction

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issued by the High Court to refund to the respondent/caveator herein an amount of Rs.98,17,880/-, which admittedly is the principal amount, which has to be refunded by the petitioner(s) to the respondent herein.

We, however, find that the High Court has further stated that the refund must be including interest for the period involved. But, there is no quantification of the interest.

In the circumstances, that portion of the direction with regard to payment of interest is set aside.

In view of the lapse of time, the aforesaid payment shall be made by the petitioner(s) herein within a period of four weeks from today without seeking any extension of time either before this Court or before the High Court.

The Special Leave Petition is disposed of accordingly.

Pending application(s) shall stand disposed of."

Learned counsel for the respondent submitted that distinction between the aforesaid order and this case inasmuch as in this case there is a specific reference to Section 55 of the Jharkhand Value Added Tax Act, 2005 (for short the "JVAT ACT') indicating that the interest will have to be paid for the period commencing 90 days after the application for refund has been made; that the legislature has intended that refund application should be decided within a period of 90 days, but in the instant case, the application was kept pending for more than three years and, thereafter simply rejected the same, which rejection order has been set aside by the High Court and there being no merit in this special leave petition, the petitioners are seeking to assail the order of the High Court. Therefore, in this case, the High Court having particularly referred to the payment of interest as per Section 55 of the JVAT Act, 6% interest may be paid from the period commencing 90 days after the application for refund is made.

In response to this submission, learned counsel for the

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petitioner(s) submitted that firstly, having regard to aforesaid order passed by this Court on 28.11.2023, where no direction for payment of interest was made insofar this matter is also concerned which is between the same parties, a consistent order may be made. Secondly, it was submitted that the respondent herein did not make an application for refund within 90 days from the date of demand notice, as per Section 19 of the JVAT Act; that due to administrative reasons there was a delay in rejection of the application. No doubt, the rejection was ultimately challenged by the respondent before the High court and the High Court having set aside the order of rejection. But, interest cannot be payable from lapse of 90 days after making the application for refund. Therefore, it was submitted that portion of the order which referes to Section 55 of the JVAT Act may not be given effect to in this case also as the respondent herein is the very same respondent/Assessee in SLP (C) Diary No. 41193/2023.

Learned counsel for the respondent has brought to our notice the fact that he has instructions to submit that there has been non compliance of order dated 28.11.2023 by the petitioners herein inasmuch as no payment has been received by the very same respondent/Assessee, although, this Court had granted four weeks time from that date without seeking any extension of time either before this Court or before the High Court.

We find that there has been a continuing lapse on the part of the petitioners herein. In the circumstances, we find that the interest of justice would be sub-served, if interest @ 6% on the

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refund amount is directed to be paid w.e.f. 26.04.2023 till the date of realisation in the instant case.

It is needless to observe that the aforesaid refund amount with interest shall be paid within a period of four weeks from today without seeking any extension of time either before this Court or before the High Court.

The Special Leave Petition is disposed of in the aforesaid terms having regard to the peculiar facts of this case.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(MALEKAR NAGARAJ)
COURT MASTER (NSH)