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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on 06.07.2012

+ **RFA 642/2004**

DELHI STATE CIVIL SUPPLIES COR. ... Appellant

Versus

THE STATE TRADING CORPN. OF IND. ...Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Kamal Mehta

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

HON'BLE MR. JUSTICE V.K.JAIN(ORAL)

1. This appeal is directed against the judgment and decree dated 27.08.2004, whereby a decree for Rs.2,63,673/- along with interest on that amount @ 12% per annum was passed in favour of the respondent and against the appellant. The facts giving rise to filing of this appeal can be summarized as under.

The respondent is a public sector company, engaged in various trading activities, including import and sale of canalized items such as Refined Bleached Deorderised (RBD) Palm Oil and other commodities, whereas the appellant is an

undertaking of the Government of NCT of Delhi which is engaged in supply of foodgrains and other essential commodities under Public Distribution System in Delhi. Prior to 19.03.1984, palm oil was subjected to sales tax at the last point and, therefore, the appellant, instead of paying sales tax, had been furnishing Declaration Form-ST-I or an undertaking to furnish the declaration to the respondent. With effect from 19.03.1984, the point at which the sales tax was to be levied on palm oil, was changed from 'last point' to 'first point' and accordingly the sales tax became payable @ 5% on the sale of RBD palm oil made by the respondent to the appellant. It appears that this change in the point at which sales tax was to be levied, did not come to the notice of the parties for some time, as a result of which, even after 19.03.1984, the appellant continued to furnish ST-I Declaration in lieu of payment of sales tax and the respondent kept on accepting the said declaration. On coming to know of the change in point at which sales tax was to be levied, the respondent asked the appellant to make payment of the sales tax on the purchases made after 19.03.1984. This amount came to be Rs.11,85,937/-. The appellant paid a sum of Rs.6,41,250/- to the respondent, leaving a balance of Rs.5,44,687.50. The plea taken by the appellant/ defendant for not paying the said amount to the respondent was that it had already deposited sales tax with the sales tax authorities and, therefore, could not be made to pay the sales tax again on the same purchases made by it from the respondent. On account of delayed payment of sales tax, the sales tax authorities levied interest by way of

interest, amounting to Rs.2,83,540/- for the year 1983-84 and Rs.2,63,673/- for the year 1984-85. The respondent initially filed a suit for recovery of Rs.5,44,687.50 being the amount of sales tax which it had deposited with the sales tax authorities but later on amended the plaint, so as to include the claim for recovery of Rs.5,27,084/- towards interest which it had deposited with the sales tax department. Interest @ 18% per annum was also claimed by the respondent from the appellant.

2. The appellant filed written statement contesting the suit and took a preliminary objection that the suit was barred by limitation. On merits, it was alleged that the plaintiff/ respondent had no right to claim interest for the year 1983-84 and 1984-85. Regarding the principal sum of Rs.5,44,687.50, it was stated that the appellant/ defendant had paid the same vide demand draft dated 6.12.1993.

4. On the pleadings of the parties, following issues were framed:

1. Whether the claim with regard to interest is barred by limitation? OPD
2. Whether the plaintiff is entitled to the interest claimed? OPD
3. Relief.

Issue No.1: Admittedly, the principal sum of Rs.5,44,687.50, which the respondent had deposited with the sales tax department, was paid by the appellant to the respondent, during pendency of this suit, vide demand draft dated 6.12.1993. The dispute between the parties is, therefore, confined to payment of interest

recovered by the department from the respondent, by way of penalty, on account of late deposit of sales tax. The respondent could not have claimed the amount of interest from the appellant, without first depositing the said amount with sales tax department. A perusal of the written statement itself shows that the appeal preferred by the respondent against levy of interest was rejected by Additional Commissioner of Sales Tax only on 4.5.1992. The order passed by Additional Commissioner of Sales Tax also indicates that the amount of interest had not been deposited during the pendency of the appeal before him and only the security of Rs.60,000/- was taken from the respondent. The amount of interest was thus deposited only after 4.5.1992. The suit have been filed on 3.8.1987 and even the amended plaint have been filed on 17.10.1992, it cannot be said that the suit with respect to claim of interest deposited by the respondent with sales tax department was barred by limitation. This issue has, therefore, been rightly decided against the appellant by the learned trial court.

Issue No.2 & 3: The contention of the learned counsel for the appellant is that it was the duty of the respondent to charge sales tax at the first point with effect from 19.03.1984 and the appellant cannot be made to pay interest by way of a penalty on account of failure of the respondent to levy charges/ sales tax at the time of sale to the appellant. I, however, find no merits in this contention. Admittedly, the sales tax was actually payable at the first point on the sales made with effect from 19.03.1984. Primarily, it was the obligation of the purchaser to pay sales tax on

prescribed rate, though a duty was also cast upon the seller to recover the sales tax at the time the sale is made. Ignorance of law being no excuse, not only the respondent but also the appellant was supposed to know that the sales tax was payable at the time when purchase was made by it from the respondent. Therefore, instead of issuing SD-Declaration Form, the appellant ought to have paid the sales tax to the respondent. Had the appellant paid the sales tax at the time of purchase of goods, instead of submitting SD-Declaration Forms, which it was not supposed to submit, on account of sales tax being chargeable at the first point of sale, no interest by way of penalty would have been recovered by the Sales Tax Department from the respondent. More importantly, the amount which was payable by the appellant towards sales tax was retained and utilized by it till its payment to the respondent. There is no reason why the respondent should pay interest for non-payment of the amount of sales tax which was utilized by the appellant, before it was deposited with sales tax department. If the appellant had recovered the sales tax from its customers at the time of sale to them and had deposited that amount with sales tax department, it can claim interest on that amount from the department, but, it must pay the amount which the department has recovered from the respondent by way of penalty on account of late deposit of the sales tax. The appellant, in a way, admitted its liability to pay the sales tax by making payment of Rs.6,41,250/- before filing of the suit and Rs.5,44,687/- during pendency of the suit. The amount of Rs.5,44,687/- was deposited by the respondent with sales tax

department in March-April, 1987. The respondent paid that amount to the appellant as late as 6.12.1993. This amount ought to have been paid by the appellant to the respondent, as soon as it was deposited with the sales tax department. By not making payment of this amount immediately after it was deposited with the sales tax department, the respondent utilized the said amount for more than six and a half years. The learned trial court has not awarded any interest to the respondent on this amount despite the fact that interest @ 18% per annum was claimed by the respondent on this amount. The equities, therefore, do not lie in favour of the appellant, it already having delayed payment of Rs.5,44,687/- by more than six and a half years. In fact, the interest payable on the said amount of Rs.5,44,687/- for more than six and a half years @ 18% per annum or even @ 12% per annum would be more than the amount of interest recovered by the sales tax department from the respondent by way of penalty on account of late deposit of the sales tax. From whatever angle I may see, there is absolutely no ground to interfere with the decision of the learned trial court as far as decree for principal sum of Rs.2,63,673/- is concerned.

However, as far as interest is concerned, considering the fact that the appellant is a public sector corporation, which was engaged in social service by distributing palm oil under Public Distribution System, I am of the view that pendent lite and future interest should be awarded @ 6% per annum as against 12% per annum as awarded by the learned trial court.

5. For the reasons stated hereinabove the judgment and decree dated 27.08.2004 is modified to the extent that decree for recovery of Rs.2,63,673/- with costs and pendente lite and future interest @ 6% per annum is passed in favour of the respondent and against the appellant. Decree sheet be drawn accordingly. The appeal stands disposed of. TCR be sent back.

V.K.JAIN, J

JULY 06, 2012

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