

THE HON'BLE SRI JUSTICE RAMESH
RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA
MURTHY

Writ Petition No.37225 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The relief sought for in this writ petition is for a Writ of Certiorari to direct the 3rd respondent to compensate the petitioner for holding the pre-deposit of Rs.28,39,94,511/- for the period from 15.03.2012 to 15.09.2015.

Facts, in brief, are that, pursuant to an order passed by the Assessing Authority levying service tax of Rs.87,38,34,876/- with penalty of Rs.150 crores, the petitioner preferred an appeal to the Commissioner of Central Excise who confirmed the demand and penalty. On appeal, the CESTAT granted stay by its order dated 14.06.2010. On appeal by the Revenue, this Court, by its order dated 19.01.2011, remanded the matter to the CESTAT. Again, the CESTAT granted stay by order dated 18.04.2011. On an appeal being preferred by the Revenue, this Court, by its order dated 19.10.2011, again directed pre-deposit. Aggrieved thereby, the petitioner carried the matter in appeal to the Supreme Court.

The Supreme Court, by its order dated 06.01.2012, reduced the pre-deposit to one-third of the service tax demanded i.e. Rs.29,12,78,300/-. The petitioner complied with the said order, and deposited the aforesaid amounts on 08.03.2012 and 15.03.2012. The CESTAT passed a final order on 01.06.2015 setting aside the demand of service tax. The petitioner filed a claim for refund of the pre-deposit on 29.07.2015 and the Deputy Commissioner for Central Excise passed an order on 15.09.2015 refunding Rs.28,39,94,511/-. On the ground that the Revenue did not pay any interest thereon, the petitioner

has invoked the Certiorari jurisdiction of this Court.

Mandamus and certiorari are public law remedies. They are not available to enforce private law rights. (**Sri Konaseema Co-operative Central Bank Ltd. v. N.**

Seetharama Raju (FB)^[1]. Public law is the system which enforces the proper performance by public bodies of the duties which they owe to the public. Private law is the system which protects the private rights of private individuals or the private rights of public bodies. The critical distinction arises out of the fact that it is the public as a whole who are the beneficiaries of what is protected by public law and it is the individuals or bodies entitled to the rights who are the beneficiaries of the protection provided by private law. ("**Public Law Private Law : Why the Divide? A personal View (published in "Public Law" Summer : (1986)" : Sir Harry Woolf; Sri Konaseema Co-operative Central Bank Ltd.**¹).

Certiorari lies to remove, for the purpose of quashing, the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. A certiorari lies only in respect of a judicial or a quasi-judicial act as distinguished from an administrative act. (**Udit Narain Singh Malpaharia v.**

Additional Member Board of Revenue, Bihar^[2]). Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the Court exercised in a writ of Certiorari. (**The King v. The Electricity Commissioner**

^[3]; **Udit Narain Singh Malpaharia**²). In order to establish that certiorari will issue, it is enough to show that the body in question was obliged to act in a judicial

manner, in the sense that it was required to determine questions of law and fact or otherwise to exercise a limited yet judicial discretion. A duty to act judicially may be inferred from the severity of the impact made by the exercise of a power or duty on individual interests.

(Halsbury's Laws of England. 4th Edition at page 104; Harijander Singh v. Selection Committee, Kakatiya

Medical College, Warangal^[4]). As the respondents, in not paying interest which the petitioner claims they are entitled to, have not exercised either judicial or quasi-judicial functions, a Writ of Certiorari cannot be issued.

While the petitioner also sought a writ of mandamus, the words "mandamus" was struck off in the prayer sought for in the writ petition. Even otherwise the petitioner is neither entitled to seek a writ of mandamus nor can the respondents be directed to grant them the relief sought for in the writ petition. A writ of mandamus is a writ which commands a public body to perform a public duty imposed on it by law. A distinction must, therefore, be made between a duty and a mere power. Mandamus is not limited to judicial acts. It will issue at the instance of a person whose legal right is involved and a corresponding statutory obligation is also involved. There must be a legal right existing in the petitioner and a corresponding legal duty upon the authority in order to issue a mandamus. (Harijander Singh⁴). Violation of any statutory provision or rule can be a ground for the issue of such a writ. (Harijander Singh⁴). Where the authority has failed to carry out a legal duty imposed on him, a writ of mandamus should issue ex debito justitiae to compel him to carry out the duty. (Bhopal Sugar Industries Ltd. v. Income Tax Officer, Bhopal^[5]). We asked Sri K.Vijay Kumar, learned counsel for the petitioner, whether there is any statutory provision obligating the Revenue to pay interest for the amount deposited by the petitioner earlier towards pre-

deposit. Learned counsel would fairly state that there was no such statutory provision at the relevant point of time; and the petitioner is invoking the equity jurisdiction of this Court under Article 226 of the constitution of India.

In the absence of any statutory provision, obligating the Department to pay interest for the amount deposited by the petitioner towards pre-deposit, the relief, as sought for, cannot be granted by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. Needless to state that this order shall not preclude the petitioner herein from availing such other remedies as are available to them under law.

The Writ Petition fails and is, accordingly, dismissed.

The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

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RAMESH RANGANATHAN, J

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M. SATYANARAYANA MURTHY, J

Date:17.11.2015.

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