HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.20333 OF 2001

ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Ch.Pushyam Kiran, learned counsel for the petitioners, learned Government Pleader for Mines and Geology and Special Government Pleader for Taxes.

The petitioners pray for Mandamus directing respondents to pay interest at 18% p.a on the amount viz., interest on delayed payment of purchase tax collected from petitioners from the date of collection of interest on purchase tax till the date of payment.

The petitioners claim to be Khandasari sugar manufacturers situated in the erstwhile State of Andhra Pradesh. According to petitioners, the respondents collected interest on delayed payment of purchase tax. Khandasari sugar manufacturers challenge the levy and demand of interest on purchase tax by the respondents. The Hon'ble Supreme Court through its judgment dated 28.04.1999 in Civil Appeal No.903 of 1984 upheld the contention of Khandasari units and thereby the levy of interest on purchase tax is found to be illegal.

The petitioners admit that they are not parties to the judgment dated 28.04.1999 in C.A.No.903 of 1984. The 2nd respondent addressed DO letter to 1st respondent requesting for issuing appropriate orders on the refund of interest on purchase tax collected by respondents. The 1st respondent issued Memo No.15941/Sug/A1/99-00593 dated 21.05.2001. The relevant portion of the Government Order reads thus:

> "The attention of the Director of Sugar and Can Commissioner is invited to the references cited. She is informed that the Government have examined the proposal contained in the reference second cited and have decided in principle to allow the claims of other sugar factories other then the six sugar factories

> covered in the GO first cited and Khandasari units for refund of interest on purchase tax collected both from Co-op and Private Sugars as well as Khandasari factories in the light of the Supreme Court ruling in C.A.No.903//84, dated 28.4.99 subject to condition that a detailed verification of their claims be made and adjustment of amounts against any purchase tax dues to the Government. Government have also decided not to allow the claim for payment of 18% interest on interest as these factories are not parties to the S.L.P.
>
> The Director of Sugar and Can Commissioner is requested to take necessary action in the matter accordingly."

Hence, the writ petition.

The 2nd respondent filed counter affidavit. It is stated that the levy of interest on delayed payment of interest on purchase tax was challenged by six private sugar factories which finally culminated in the judgment dated 28.04.1999. It is further stated that the benefit of the judgment dated 28.04.1999 cannot be automatically claimed by the petitioners herein. The 2nd respondent specifically contends that the petitioners Khandasari Units were dismantled long back and none of them, except two, are working. To appreciate the contention of respondents, we deem it appropriate to excerpt relevant portion of the counter affidavit which reads as follows:

> "It is further submitted that Government is taking action to refund the interest amount collected on delayed payment of purchase tax from Sugar Factories and Khandasari Units in the light of Government decision in Memo No.15941/Sugar/A1/99 dated 21.5.2001. It is further submitted that out of ten petitioners in this writ petition, eight petitioner Khandasari Units were dismantled long back some where before the year 1990 and not in operation. Only two Khandasari Units are working. A decision will be taken by the Government soon after receipt of the proposals Khandasari Unit wise from Field Level Officers for refund of interest on purchase tax collected from 29.12.1975 to the date of further Amendment of the Act i.e., 27.12.1999, for working and sick units separately.

> It is therefore submitted that Government have already taken decision, as submitted supra, not to allow the claims for payment of @ 18% interest on interest as these sugar factories are not parties to the Special Leave Petition filed by Six Private Sugar Factories. Government will refund only interest amount collected on delayed payment of purchase tax, subject to verification of date of each Unit".

Mr.Pushyam Kiran, learned counsel for the petitioners, contends that the recovery of interest on delayed payment of purchase tax is without authority and the benefit given to the appellants in the judgment dated 28.04.1999 should be extended to the petitioners as well. He placed reliance upon **UNION OF INDIA THROUGH DIRECTOR OF INCOME TAX V. TATA CHEMICALS LIMITED**[1] to contend that interest on delayed payment of purchase tax was collected without authority and while refunding the interest already collected, the respondents are under legal obligation to pay interest from the date of recovery till the date of repayment.

Learned Special Government Pleader contends that the judgment dated 28.04.1999 has to be appreciated and applied only to the appellants before the Apex Court, for the Apex Court while refusing to grant stay of the judgment or the orders under appeal had directed that in the event the appeals succeed and respondents therein were held liable to refund the amounts recovered on account of refusal of stay, within three months from the date of the order with interest at 18% p.a from the date of payment till the amounts were refunded.

The petitioners have firstly not challenged the levy of interest on delayed payment of purchase tax and secondly the petitioners are not in existence as stated in the counter affidavit. Unless and until the existence of petitioners is satisfactorily established, the learned counsel contends that, by referring to judgment of the Supreme Court dated 28.04.1999, no direction to pay interest can be given. He further contends that the memo challenged is intra departmental communication and could not be challenged by the petitioners, much less any direction is issued for payment of interest. He further contends that there is no order of repayment to the petitioners and the claim for interest at this stage is imaginary.

We have perused the material available on record and have taken note of the submissions of learned counsel appearing for the parties. At the outset, we would like to consider the factual objection taken by the respondents. It is the case of respondents that in the present writ petition, Khandasari units (8) were dismantled and closed in 1990 and are not in operation. Only two units were working and in spite of granting adjournment, learned counsel for the petitioners could not give any particulars of closed units and details of two units as on date.

Prima facie, we are of the view that the petitioners' units were dismantled long ago and are not in existence. Further, the petitioners have not, along with appellants in C.A.No.903 of 1984, challenged the levy of interest on delayed payment of purchase tax. The reasons for grant of interest to appellants in C.A.No.903 of 1984 are already noted by us in this order. The petitioners by challenging an intra departmental memo, without individual demand, order or refusal by the respondents herein, pray for direction to pay interest. The petitioners cannot claim automatic application and extension of refund, much less interest on purchase tax by the petitioners. Further, the memo is not addressed to the petitioners and it is only intra departmental communication. By reference to such intra departmental communication, we are not inclined to consider the prayer and grant relief to the petitioners.

For the above three reasons, the writ petition fails and is accordingly dismissed. No costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE,

ACJ

S.V.BHATT, J

Date: 19.01.2016

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[1] (2014) 6 SCC 335