

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

BEFORE :
The Hon'ble Justice Soumen Sen
And
The Hon'ble Justice Uday Kumar

APO No. 461 of 2015

With

WPO 1105 of 2004

With

G.A. NO. 2705 of 2015

Abhishek Karnani
Vs.
Kolkata Municipal Corporation & Ors.

For the appellant : Mr.Rajarshi Dutta, Adv.
Mr. Ashim Kr. Chattopadhyay, Adv.

For the respondent : Mr. Alak Kumar Ghosh, Adv.
Mr. Biswajit Mukherjee, Adv.
Mr. Gopal Chandra Das, Adv.

Hearing Concluded on : 3rd January, 2023

Judgment Date : 17th January, 2023

Soumen Sen, J.: This appeal is arising out of a judgment and order dated 14th May, 2015 passed by the learned Single Judge in a writ petition, being W.P. No. 1105 of 2004.

The background facts as are relevant in deciding the appeal are as follows:

The appellant/writ petitioner purchased a flat at 8, Moira Street, Kolkata – 700 017 (hereinafter referred to as ‘the said flat’) by a registered deed of conveyance dated 7th April, 1992. Pursuant to the notice dated 13th January, 1996 under Section 184(4) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as ‘the K.M.C. Act’), the Municipal Authorities proposed to assess annual valuation of the said flat at Rs. 44, 840/- commencing from the first quarter of 1989-90 and Rs.47,090/- commencing from the fourth quarter of 1990-91. Thereafter, the Hearing Officer, Kolkata Municipal Corporation (in short ‘KMC’), by an order dated 14th March, 1996, confirmed the valuation of the said flat at Rs.42,210/- with effect from the first quarter of 1989-90 and Rs.42,500/- for the period commencing from the fourth quarter of 1990-91.

The writ petitioner being aggrieved, *inter alia*, by the assessment of the aforesaid annual valuation filed a writ petition. The said writ petition was disposed of by an order dated 23rd October, 1997 directing the writ petitioner to deposit the full amount of the property tax assessed as a condition precedent to prefer appeals. It was only on such deposit being made appeals can be preferred from the order of the Hearing officer before the appellate authority established under the KMC Act, 1980 being the Municipal Assessment Tribunal.

The appellant/writ petitioner, after depositing the aforesaid sums with the KMC, preferred two separate appeals before the Municipal Assessment Tribunal, being M.A.A. Nos. 1708 and 1709 of 1997 assailing the valuations of the said flat made by the Hearing Officer for the

aforementioned periods. The Municipal Assessment Tribunal disposed of the two appeals by an order dated 19th June, 2001, by reducing the annual valuation of the said flat for the period commencing from the first quarter of 1989-90 and the period commencing from the fourth quarter of 1990-91, respectively from the earlier valuations determined by the Hearing Officer to Rs.11,610/- for both the under challenge periods. However, the amounts deposited on the basis of the earlier valuations before filing the said appeals were not returned to the appellant/writ petitioner after adjustment. The appellant/writ petitioner, by a letter dated 28th September, 2001, requested the Asst. Assessor/Collector, Division-18 to arrange for refund of the excess amount paid to the appellant/writ petitioner along with accrued interest. The appellant/writ petitioner in the said communications clearly expressed its intention of not paying any municipal taxes from the third quarter of 2001-02 pending issuance of fresh bills, refund and adjustment. The appellant/writ petitioner sent a reminder by a letter dated 13th April, 2002, showing, *inter alia*, the payments made by the appellant/writ petitioner in accordance with the order passed in the earlier writ petition on 23rd October, 1997 and the payments made during the pendency of the aforementioned appeals before the Municipal Assessment Tribunal. The KMC was requested to arrange for the adjustment of the period 2002-03 (Four Quarters) and refund the balance amount along with interest at the earliest. In addition to this, the appellant/writ petitioner between April, 2002 and April, 2003 sent three letters dated 12th April, 2002, 13th November, 2002 and 11th April, 2003 respectively requesting for refund of

the excess payment made after due adjustment of the municipal taxes calculated in accordance with the revised annual valuation of the said flat.

Ignoring the aforesaid KMC, by a notice dated 12th November, 2003, bearing no. ACHQ/163922, intimated the appellant/writ petitioner of his default in payment of municipal taxes for the first and second quarter of 2003-04 and demanded payment. The appellant/writ petitioner replied to this notice by a letter dated 17th December, 2003 in which it is stated that a sum of Rs.1,11,648/- had already been deposited in excess and withheld by the Municipal Authorities and in spite of several requests KMC has neither adjusted nor refunded the said amount, therefore, the appellant cannot be held to be defaulter. In the meantime, the appellant/writ petitioner received a Rate Card, bearing no. A0228477, whereby, the annual valuation of the said flat was revised at Rs.16,200/- with effect from the fourth quarter of 1996-97. This Rate Card was followed by a supplementary bill dated 11th December, 2003, bearing no. Q/939, for the period commencing from the fourth quarter of 1996-97 and upto the fourth quarter of 2003-04, which was raised on the basis of the revised valuation of the said flat.

In response to the said supplementary bill, the appellant/writ petitioner, by a letter dated 14th January, 2004, *inter alia*, requested the Municipal Authorities to adjust the sum of Rs.90,101/- as claimed in the supplementary bill against the refundable sum of Rs.1,11,648/-, which had been deposited in excess and retained by the KMC. The appellant/writ petitioner also requested the Municipal Authorities to refund the balance

amount after adjustment. The municipal authorities by a letter of intimation, bearing no.A039037, dated 21st February, 2004, to the appellant/writ petitioner showing adjustment of the municipal taxes for the said flat up to the fourth quarter of 2003-04 made on the basis of the aforesaid new valuation. This letter of intimation also revealed that a refundable sum of Rs.1,85,865/- was still lying deposited with the municipal authorities. Finally, by a letter dated 17th March, 2004, the appellant/writ petitioner demanded immediate refund of the excess sum of Rs.1,85,865/- along with interest within a period of 15 days from the receipt of the said letter, however, no reply to this letter was received by the appellant/writ petitioner.

In view of refusal and/or failure and neglect to refund such excess amount the appellant/writ petitioner filed the writ petition in this Hon'ble Court, being W.P. No. 1105 of 2004.

KMC contested the proceeding without filing any affidavit.

The learned Single Judge identified the main issue as "whether the KMC was liable to refund the amount deposited with it under Section 197 of the KMC Act along with interest and, if so, at what rate".

The learned Single Judge in declining to allow the prayer for refund or refund with interest has relied extensively on the judgment of **Justice Bhaskar Bhattacharya**, as His Lordship then was in ***Amal Kumar Roychowdhury & Anr. v. Kolkata Municipal Corporation & Ors.*** reported at **2002(4) CHN 569**. It appears from the impugned order that on

behalf of the appellant it was argued that in view of the judgment of the Hon'ble Division Bench in **APOT No. 276 of 2000, G.A 1395 of 2000, W.P. No.1293 of 1998 (Calcutta Municipal Corporation & Ors. v. Larsen and Toubro Ltd. & Anr.) decided on 7th April, 2000** the reliefs claimed in the writ petition is maintainable. The learned Single Judge noted that **Justice Bhattacharjee** in **Amal Kumar Roy Chowdhury & Anr** (*supra*) considered the judgment of Justice **D.P. Kundu** as His Lordship then was, in **Larsen and Toubro Ltd. & Anr. v. CMC** reported at **1999 WBLR (Cal) 527** along with **Union of India & Ors., v. M/s. Orient Enterprises & Anr.**, reported at **AIR 1998 SC 1729** and **Kirloskar Brothers Ltd. v. Union of India** reported at **2001(132) ELT 519 (SC)** and observed that the judgment in **Larsen and Toubro Ltd.** (*supra*) could not be accepted as precedent. **Justice Basak** has concurred with that view in the following words:

“The Division Bench rendered in Larsen & Toubro Limited & Ors. (supra) has not been placed before me for consideration. Mr. Dutta did not distinguish Amal Kumar Roychowdhury & Anr. (supra). Mr. Dutta did not urge any ground which has not been considered in Amal Kumar Roychowdhury & Anr. (supra) excepting the amendment to Section 197 of the Act of 1980 which has happened subsequent to such judgment. Mr. Dutta has urged that the amendment to Section 197 of the Act of 1980 would demonstrate that prior to such amendment, interest was payable by the Corporation on delayed refund of Property Tax.

Prior to its amendment, Section 197 of the Act of 1980 was silent as to payment of interest for delayed refund of Property Tax. After amendment, Section 197 of the Act of 1980 specifies that no interest is payable on refund of Property Tax. Section 197 of the Act of 1980 as it

*stood prior to amendment has been considered in **Amal Kumar Roychowdhury & Anr.** (supra).*

*A writ petition is maintainable to enforce a constitutional or a legal right. The writ petitioner herein has not demonstrated accrual of any right in its favour by reason of non-refund of the excess amount of Property Tax deposited with the Corporation authorities. In the instant case, the writ petitioner was allowed by the Writ Court to prefer an appeal against the order of the Hearing Officer subject to the writ petitioner depositing the amount required to be deposited under statute. The facts of this case are akin to that of **Amal Kumar Roychowdhury & Anr.** (supra).*

*I respectfully follow **Amal Kumar Roychowdhury & Anr.** (supra). The Corporation is not liable to refund any amount deposited with it under Section 197 of the Kolkata Municipal Corporation Act, 1980 with interest. Since no interest is payable the question of rate of interest does not arise. The issue raised in the writ petition is answered accordingly.*

Since the writ petitioner is found not to be entitled to any interest on refund of the excess Property Tax, the question of quantification of the rate of interest does not arise. In the present petition, the writ petitioner has claimed refund with interest. The Corporation authorities in the course of hearing however have volunteered to refund the excess Property Tax to the writ petitioner. In such view, the Corporation authorities will refund the excess amount to the writ petitioner within a period of four weeks from the date of this judgment. Needless to say the Corporation authorities need not pay any interest thereon, if the refund is made within the time allowed.”

Mr. Rajashri Dutta, learned Counsel appearing on behalf of the appellant has submitted that it is admitted that on 28th September, 2001 the appellant requested to KMC to refund the huge excess amount paid by the appellant during the pendency of the appeals along with accrued interest.

Mr. Dutta has referred to the correspondence by and between the parties to show that there have been repeated requests and reminders for refund of the excess amount after adjustment. It was only on 21st February, 2004 that the KMC forwarded the tabulated chart to the appellant from which it appears that KMC had adjusted the municipal tax for the said flat for the quarter 2003-04 on the basis of the revised valuation and on such adjustment a sum of Rs.1,85,865/- was lying in excess in the suspense account. This amount was not refunded with accrued interest in spite of the demand being made in this regard by the appellant in its letter dated 17th March, 2004.

Mr. Dutta submits that for proper and better adjudication of the issues we may take note of Section 189(6) for the consequence of non deposit of the property tax Section 197(1) for the effect of pendency of an objection to a valuation made under Section 186 and requirement to pay to the previous valuation, Section 197(2)(b)(ii) for the statutory duty and obligation of the KMC either to refund or set off against in present or future demand. Section 197(2)(b)(iii) introduced by amendment with effect from 1st May, 2007 which casts an obligation upon the corporation to refund the amount without any accrued interest. Section 217(3) introduced by amendment with effect from 15th May, 1994 the recognition of statutory right of KMC to impose simple interest on the unpaid bills. Section 599 restrains and prohibit corporation from disregarding any law for the time in force.

Mr. Dutta submits that Section 4(2)(a) of the Interest Act, 1978 is saved by Section 599 of the KMC Act and confers a valuable right on the appellant to claim interest on the excess amount not refunded at same rates which KMC charges for bills remaining unpaid beyond 30 days.

Mr. Dutta has raised the following three issues for consideration:

(i) Whether in terms of the pre-amended provision of Section 197(2)(a) of the said Act, the sum realised in excess is refundable mandatorily or subject to adjustment against future taxes at absolute discretion of the corporation?

(ii) If it is held that such sum is refundable to the assessee, in that case, whether it should carry interest within the meaning of Section 4(2)(a) of the Interest Act irrespective of whether anything stands mentioned/not mentioned in Section 197(2)(i) of the said Act?

(iii) To consider whether the judgment of this Hon'ble Court in the matter of **Amal Kumar Roychowdhury** (supra) relied upon by the learned Single Judge is applicable, both in facts and law.

Mr. Dutta submits that the argument of KMC that the appellants were under statutory obligation to pay the bills irrespective of the fact that the valuation was reduced by the tribunal subsequently and KMC cannot be saddled with the liability to pay interest as the appellant was obliged to comply with the statutory provision of depositing the amount and KMC had demanded payment of rates in exercising of statutory power and in accordance with the aforesaid provision is untenable as there is a statutory

requirement under Section 189(6) of the KMC Act, 1980 that unless the assessee deposited the tax assessed on the valuation determined under Section 180 no appeal shall be entertained unless such property tax is continued to be deposited till the appeal is finally disposed of.

The appeals had remained pending for four years and the appellant was compelled to pay the rates and taxes in accordance with the valuation determined under Section 180 of the KMC Act. It was only after the tribunal passed its final judgment and order drastically reducing the annual valuation the appellant became entitle to refund of the excess amount lying deposited in terms of the Section 197(2)(a).

Mr. Dutta submits that the appellant also requested the KMC to adjust its dues for the fourth quarter of 2003-04 and refund the excess sum together with interest thereon. It is submitted that there is a clear mandate in Section 197(2)(b)(ii) that KMC is required to refund or set off against any present or future demand. Mr. Dutta referring to Section 197(2)(b)(iii) which was introduced by amendment with effect from 1st May, 2007 submits that the said amendment makes it very clear that prior to such amendment an asseessee who became eligible for refund would also be entitled to receive interest on the refund, otherwise, there would not have been any necessity for the legislature to amend Section 197(2)(b) of the said Act clearly specifying that refund of amount to be made by the KMC to an asseessee shall not accrue any interest thereon.

Mr. Dutta submits that reliance on ***Amal Kumar Roy Chowdhury*** (*supra*) by the learned Single Judge was inappropriate in the facts of the

present case. The said judgment was delivered on 4th September, 2002 i.e. prior to the amendment to Section 197(2)(b) of the said Act. The learned Judge, while delivering the judgment held that the petitioner's in such case must establish that law casts a duty upon the corporation to refund the excess amount with interest and the corporation being a creature of statute had no right to pay any interest unless the Act permitted and the rate of interest is specified. The said judgment was considered by a Division Bench of this Hon'ble Court in the matter of the **Larsen and Toubro Ltd.** (*supra*). In the said matter, the writ petition praying for refund of excess amount with interest was allowed by the learned Single judge. The corporation challenged the order of the learned Single Judge in an intra court appeal and relied upon Section 197(2) of the said Act to contend as follows:

- (i) The corporation has a discretion either to refund the amount which has been paid or deposited under Section 189 in excess or set off the same against any present or future dues of the corporation.
- (ii) The said act is a special statute and no provision has been made therein as regards payment of interest; and
- (iii) The provisions of the Interest Act, 1978 had no application.

The Division bench held that it has not been and could not be disputed that in the absence of any provision of statute as regards payment of interest, the Interest Act, 1978 shall apply. The Division Bench further

held that a person, both on principle as also in equity is entitled to interest for the amount paid or deposited either in terms of the provision of the statute or otherwise. It was also held after considering the provision of the said Act, that it cannot be the intention of the legislature that the corporation would be run on the excess amount deposited by owners/occupiers of holding. The division bench dismissed the appeal of the corporation with cost and affirmed the judgment and order dated 30th September, 1999 passed by the learned Single Judge allowing the writ petition.

The Judgment and order under challenge in the present appeal was delivered by the learned Single judge accepting the view of ***Amal Kumar Roy Chowdhury*** (supra) which had considered ***Larsen and Toubro Ltd.*** (supra). The view expressed in ***Amal Kumar Roy Chowdhury*** (supra) is contrary to the Division Bench decision in the matter of ***Larsen and Toubro*** (supra). When the statute has provided either for refund or to allow set off or adjustment of the excess sum realised, in that event the refund if asked for by the assessee, the corporation is bound to refund such excess sum.

Mr. Dutta submits that in view of the use of the words “Shall” in Section 197 with regard to refund all excess amount once a request is made for refund of such excess amount KMC has no discretion to withhold such amount. Mr. Dutta submits that the word “shall” makes it obligatory for the corporation to refund of excess amount. In this regard, reliance is placed on the decision of the Hon’ble Supreme Court in ***Sriram Dayaram***

& Ors. v. The State of Maharashtra reported at **AIR 1961 SC 674 paragraph 8**. Mr. Dutta for the proposition that when the words of a statute are precise and unambiguous they should be expanded in their natural and ordinary sense has relied upon the decision of the Hon'ble Supreme Court in **State of Uttar Pradesh & Ors. vs. Baburam Upadhyay** reported at **AIR 1961 SC 751 paragraph 23** where it is held:

"23..... rules made under a statute must be treated for all purposes of construction or obligation exactly as if they are in the Act and are to be of the same effect as is contained in the Act and each to be judicially notices for all purposes of construction or obligation."

Mr. Dutta submits that in order to find out whether a provision is mandatory or directory it is essential to find out the subject matter, importance of the provision, the relation of that provision to the general object intended to be secured by the Act as held in **Govindlal & Chaganlal Patel v. The Agriculture Produce Market Committee & Ors.** reported in **AIR 1976 SC 263 in paragraph 13**. It is submitted that the said judgment has followed an earlier decision of the Hon'ble Supreme Court in **Re: Presidential Poll** reported in **AIR 1974 SC 1682 at 1686** which, inter alia, has stated:

"In determining the question whether a provision is mandatory or directory, the subject-matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get at the real intention of the legislature by carefully attending to the whole scope of the provision to be construed. 'The Key to the opening of every law is the

reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole'."

Since the words used in Section 197(2)(a) of the said Act is clear and unambiguous, it is obligatory on the part of the corporation to refund the excess sum. No discretionary power can be exercised by the corporation in the matter of refund or not to refund or to set off and/or adjustment, particularly when the refund has been asked for by the appellant. In support of the contention of the appellant reliance is placed on the following observation of the Hon'ble Supreme Court in **M/s. Shib Shanker Dal Mills etc. vs. State of Haryana & Ors.**, reported in **AIR 1980 SC 1037**.

"Where public bodies, under colour of public laws, recover people's moneys, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs."

It is submitted that while dealing with the aforesaid case the Honble Supreme Court also held that Article 226 of the Constitution of India grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the court exercising this flexible power to pass such order, as public interest dictates and equity projects. The Hon'ble Supreme Court further held that "..... courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go whether only private interests are involved. Accordingly the granting or withholding

of relief may properly be dependent upon consideration as of public interest...”.

In so far as the power of the High Court under Article 226 is concerned, reliance is placed in **State of Madhya Pradesh & Anr. v. Bhailal Bhai & Ors.** reported in **AIR 1964 SC 1006** paragraphs 14, 16 and 17 in which the Apex court inter alia, held that “.....*The question is whether the relief of repayment has to be sought by the tax-payer by an action in a civil court or whether such an order can be made by the High Court in exercise of its jurisdiction under Art. 226 of the Constitution. The jurisdiction conferred by Art. 226 is in very wide terms. This Article empowers the High Court to give relief by way of enforcement of fundamental rights and other rights by issuing directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. According to the petitioners a writ in the nature of mandamus can be appropriately used where money has been paid to the Government by mistake to give relief by commanding repayment of the same.....*”

On the issue relating to entitlement of interest on the excess amount Mr. Dutta has relied upon the decision of the Hon’ble Supreme Court in **State of Rajasthan vs. Raghubir Singh & Ors** reported in **AIR 1979 SC 852 paragraph 4** which inter alia, has stated:

“....Under the Interest Act, 1839, "upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable,

if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment : provided that interest shall be payable in all cases in which it is now payable by law". (emphasis supplied)

It is submitted that in the instant case the appellant had made several demands for refund of the excess amount realised together with interest inasmuch as the corporation has categorically admitted that at the relevant point of time a sum of Rs.1,85,000/- was lying as refundable sum, but was kept in a suspense account. Accordingly, the appellant is entitled to refund of such sum after adjustment of the then pending taxes together with interest, in view of the observation at paragraph 5 of **Raghubir Singh** (supra), which has stated:

"....In our view the condition prescribed by the Interest Act that such demand shall give notice to the debtor that interest shall be claimed is fulfilled if interest is claimed, notwithstanding the fact that the notice of demand explains that loss by way of loss of interest has been suffered. To take any other view would be to be over technical in the construction of pleadings, including notices preceding the action." (emphasis supplied)

Mr. Dutta has made further reference to the Division Bench judgment of this Court in **Shidharth Construction & Trading Pvt. Ltd. & Anr. vs. Assistant Commissioner Commercial Taxes & ors.** reported in **Sales Tax Advice (Vol-45)**, that allowed interest on the refundable sum @6% p.a.

Similarly a Division Bench of this Hon'ble Court in APO No. 479 of 2006 arising out of WP 1557 of 2005 [**Larsen and Tubro & Anr. v. The Kolkata Municipal Corporation & Ors.**], decided on 9th December, 2011 was relied on to show that on similar fact situation the view of the learned Single Judge was reversed with the observation that:

".....Learned Trial Judge ought to have granted interest on the excess deposit from the date of making demand not from the date of disposal of the appeal".

A consolidated interest was awarded on the excess sum deposited with the corporation.

It is submitted that in the aforesaid decision **Larsen & Toubro Ltd & Anr.**, (*supra*) the co-ordinate bench had relied upon **ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation Ltd. & Ors.** reported in **2005(10) SCC 495** in allowing interest. It is further submitted that most of the judgments relied upon by KMC in denial of interest were considered by the co-ordinate Bench in **Larsen & Toubro** (*supra*) and on consideration it was held:

"We, therefore are of the view that we do not find any reason to take a different view even on the strength of the aforesaid Supreme Court pronouncement simply for two reasons. Firstly those rendered relate to payability of interest on refundable indirect tax, which does not admit of quid pro quo unlike consolidated rate payable to corporation. Secondly those judgments do not decide the issue directly involved herein."

It is submitted that had the corporation refunded the excess amount in time the appellant could have deposited the money in fixed deposit with

any nationalised bank yielding highest interest and out of interest earned could have paid of the property tax for a subsequent quarter keeping the principle sum intact. Mr. Dutta submits that in view of the recent decision of the Hon'ble Supreme Court in ***Union of India through Director of Income Tax v. Tata Chemicals Ltd.*** reported at **AIR 2014 SC 3483** the right to receive interest on the excess amount lying deposit with the corporation cannot be denied. Mr. Dutta has relied upon the following observation of the Hon'ble Supreme Court in paragraph 37 and 38 as follows:

“37.....When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited.....”

“38.The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductor lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances.....” (emphasis supplied)

Mr. Dutta submits that the obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party, which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course.

Per contra, Mr. Alok Kumar Ghosh, the learned Counsel for the respondent in support of the impugned order has submitted that the both prior and subsequent to amendment of Section 197 of the KMC Act, 1980 there was and is no provision for any refund with interest. The appellant was required to pay property tax on time on the annual valuation as determined. The petitioner seems to have not paid property taxes as per bills as presented in time after the annual valuation was decided by the Hearing Officer with effect from the periods mentioned in the assessment order. Section 217 of the KMC Act, 1980 providing, *inter alia*, that if the property tax is not paid after it has become due simple interest at such rate as may be determined by the State Government from time to time shall be payable for the period commencing on the 1st day of the quarter following that in which the bill is presented and ending with the month preceding the month in which the payment is made. The appellant failed and/or neglected to pay the bills for property tax in time. Thereafter, the Hon'ble High Court in the earlier writ petition directed the petitioner to pay the amount as demanded and thereafter to prefer appeal, if desired. Therefore, on the unpaid amount interest accrued and the appellant/ petitioner on his own fault had to pay interest as provided under the law. Section 189 of the KMC Act, 1980 states, *inter alia*, that no appeal shall be entertained unless the property tax including penalty together with interest on such property tax for the period on the date of presentation of appeal on the determined valuation has been deposited and the appeal shall abate unless such property tax together with interest thereon, if any, is continued to be deposited regularly till the appeal is timely disposed of. In view of the said

statutory provision, the appellant/petitioner was required to continue depositing property tax on the decided annual valuation on and from the order of the Hearing Officer i.e. on 14th March, 1996 till the disposal of the appeal on 4th July, 2001 together with interest, if any.

It goes without saying that if the property tax bills are paid in due time no amount of interest would be required to be paid. The appellant upon preferring the appeal have to go on depositing the property tax on the decided annual valuation to get the appeal entertained as per Section 189(6) of the KMC Act, 1980. It is, thus clear that whatever amount of interest required to be paid by the petitioner was due to his own fault and/or default. The KMC cannot said to have withheld any amount of the petitioner's money beyond the scope of provision of law.

It is submitted that Section 197 of the KMC Act, 1980 provides for payment of property tax in case of objection or appeal. It states, *inter alia*, that if the appeal is disposed of under Section 189 by altering the valuation decided under Section 188 then any sum paid or deposited under Section 189 in excess shall be refunded or allowed to be set off against any present or future demand of the corporation under the Act.

It further states that any deficiency shall be deemed to be the arrear of property tax and shall be payable as such. There was an amendment of the said Section 197 of the KMC Act, 1980 which is in operation since the year 2017. The third proviso under Section 197(b) of the KMC Act state that in case of refund, if any, is to be made by the corporation to the assessee such refund amount shall not accrue any interest thereon.

It is true that the amount of annual valuation as decided by the Hearing Officer was reduced by the learned Tribunal while disposing of the appeal. The excess deposit arose only after the decision of the learned Tribunal but the alternative provision under Section 197 of the KMC Act, 1980 have given the discretion to the KMC either to refund or to allow to set off against any present or future demand. The appellant does not have any right to claim refund under the law. The law also, as it stands, does not provide for payment of interest on the refund amount, if payable. In order to avoid any controversy, though the law as it stood before amendment was clear, the amendment was brought into effect that in case of refund no interest should be paid. The amendment also gives discretion to KMC regarding refund. Therefore, in the facts and circumstance of the case claim the refund of excess amount together with interest thereon is unsustainable.

Mr. Ghosh in aid of his submission that in absence of any statutory provision allowing refund of excess amount or refund with interest the writ petition is not maintainable, has relied upon the decision of the Hon'ble Supreme Court in ***Union of India & Ors. v. Orient Enterprises & Anr.***, reported at **AIR 1998 SC 1729** paragraphs 6 and 7. It is submitted that in the said decision the Hon'ble Supreme Court has categorically stated that in absence of any statutory provision no legal right accrues in favour of the assessee to claim interest for delayed refund. Taking his argument a little further Mr. Ghosh has relied upon the decision in the Hon'ble Supreme Court in ***Indian Carbon Ltd. v. State of Assam*** reported at **1997 (106)**

STC 460 (SC) paragraphs 6, 7, 13 and 14, ***Ambika Chemical Product v. Commercial Tax Officer*** reported in **1999 (114) STC 88 (AP)**, ***Controller of Income Tax Kerala v. Tara Egencies*** reported in **2007(214) ELT 491 (SC)**.

Mr. Ghosh submits that interest is admissible in tax enactment on two grounds only, namely, agreement or statutory provision and in absence of either interest cannot be granted on the basis of equity under the tax enactment as held in ***State of Punjab v. Atul Fasteners Ltd.*** reported in **2007(211) ELT 519(SC)** and ***Ferro Alloys Corporation Ltd. v. A.P. State Electricity Board and Anr.*** reported in **AIR 1993 SC 2005**. It is submitted that the power under Article 226 and 227 cannot be invoked for the purpose of directing the authorities to act contrary to law since, such power is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State Act in accordance with law. For the said proposition he has relied upon the decision of the Hon'ble Supreme Court in ***Union of India v. Kirloskar Puenmatic Company*** reported at **1996(84) ELT 401 (SC)**.

Mr. Ghosh submits that the court is required to take into consideration a change in during the pendency of the appeal and the rights and liabilities of the parties are required to be decided on the basis of the law existing on the date of the decision and not the earlier law has held in ***Lakshmi Narayan Guin & Ors. v. Niranjana Modak*** reported in **AIR 1985 SC 111** and ***State of West Bengal v. Tera Ferma Investment & Trading Pvt. Ltd.*** reported in **1995 (1) SCC 125**. Although most of the

decisions presently relied upon by Mr. Ghosh were being considered by the later Division Bench in **Larsen and Toubro Ltd.** (supra) we proposed to consider the said judgment in order to find out whether the said judgments are applicable in the present facts and circumstances of the case.

In **M/s. Orient Enterprises** (supra) till the insertion of 27(a) in the Customs Act, 1962 there was no right entitling payment of interest on delayed refund under the Act. Such a right was conferred for the first time by the said provision. At the relevant point of time there was no provision regarding payment of interest on delayed refund. Factually it would appear that the Hon'ble Supreme Court took into consideration that the following paragraph in the affidavit filed on behalf of the Union of India in reply to the show cause notice to the writ petition in which it was stated:-

“3.It is further submitted that the Customs Department does not charge any interest on the short payment of duty on goods imported or exported. No interest is charged on delayed payment of fine or penalty imposed on the importer/exporter for violation of the provisions of the Customs Act, 1962. Similarly, no interest can be paid on the amount refunded in pursuance of the order in appeal.”

In **Orient Enterprises** in paragraph 5(A) the Hon'ble Supreme Court referred to its earlier decision in **Suganmal** in which it was, inter alia, observed that:

“5A.The parties had the right to question the illegal assessment orders on the ground of their illegality or unconstitutionality and, therefore, could take action under Art. 226 for the protection of their fundamental right and the Courts, on setting aside the assessment order, exercise their jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this principle and, therefore,

hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right.”

Thereafter in paragraph 7 of the judgment on consideration of **Suganmal** (supra) the following observation was made:

“7.The decisions on which reliance has been placed by Shri Rawal were cases where the legality of the orders requiring payment of tax or duty were challenged and the High Court in exercise of its jurisdiction under Art. 226 of the Constitution, while setting aside the said orders, has directed the refund of the amount so collected with interest. The direction for payment of interest in these cases was by way of consequential relief along with the main relief of setting aside the order imposing the tax or duty. Those cases stand on a different footing and have no application to the present case.”

The said cases are distinguishable since the appellant has filed the statutory appeal before the Municipal Tribunal as required under the statute upon depositing the amount adjudicated and continued to deposit the amount till the disposal of the appeal by the tribunal as failure to deposit any such amount during the pendency of the appeal, the appeal would have stand abated. The appellant although have approached the High Court under Article 226 of the Constitution of India assailing the order of the hearing officer but due to provision of appeal under the KMC Act the writ court decline to interfere with the order of the hearing officer and directing the appellant to pursue its legal remedies before the tribunal. The tribunal allowed the appeal by reducing the annual valuation which gives right to the appellant either to seek refund or set off. Initially prayer was made for adjustment and upon adjustment refund of the balance amount which was ignored and ultimately on 17th March, 2004 the

appellant claimed refund with interest. Had the writ court exercises its jurisdiction previously and adjudicated the amount in favour of the appellant as a consequential relief the interest could have been granted. Moreover, in **Ambika Chemical** (supra) it was an indirect tax which was recoverable and realisable to the customer and the deposit in the instant case, is not aken to the duty paid by orient. It was an indirect taxation. In **Indian Carbon Ltd.** (supra) will have no manner of application as it is a settled law that for imposition of any tax or charging any interest on delayed payment there has to be a specific provision in the fiscal statute. It was held that any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not an adjective law. Apart from the aforesaid, in the instant case, there is no imposition of tax per se it is a deposit of consolidated rate no synonymous with any tax. The other factor would be that it is an indirect tax realisable from the customer.

In **Atul Fasteners Ltd.** (supra) interest on refund was not allowed since sales tax is indirect tax and assessee collect sales tax from his customer as an agent for Government. The relevant observations in this regard are:

“5. The tax was collected by the assessee from its customers as an agent for the Government. The assessee is allowed to retain that amount which has accrued to the account of the State Government. therefore, the question of payment of interest under the Deferment Scheme does not arise. This reasoning appears to be the basis for the Scheme for not providing for the payment of interest”.

The learned Counsel has argued that the learned Single Judge has considered the relevant provisions of KMC Act, 1980 and rightly applied the

ratio in ***Amal Kumar*** (*supra*) which has clearly distinguished the single bench judgment of ***Larsen and Toubro*** (*supra*).

For proper and better appreciation of the issues involved in this appeal we feel it necessary to refer to few sections of the KMC Act, 1980 pre and post amendment in a tabular form.

Kolkata Municipal Corporation Act

Section	Pre Amendment	Post Amendment with effect from 1 st May, 2007
197. Payment of property tax in case of objection or appeal	1. When an objection to a valuation has been made under section 186, the property tax shall, pending the determination of the objection under section 188, be payable on the previous valuation in the usual manner. 2. If, after the objection has been determined under section 188, the previous valuation is altered, or after the appeal has been disposed of under section 189, the valuation decided under section 188 is altered, then— (a) <u>Any sum paid or deposited under section 189 in excess shall be refunded or allowed to be set-off against any present or future demand of the Corporation under this Act, and</u> (b) Any deficiency shall be deemed to be an arrear of the property tax and shall be payable and recoverable as such: Provided that— (i) (ii) <u>If, when such objection has been finally determined, such valuation is reduced, and if the property tax has already been paid thereon, then the sum paid in excess shall be refunded or allowed to be set-off against any</u>	If after the disposal of any appeal under section 189, the valuation decided under section 174 or section 188 is altered, then— (a) <u>Any sum paid or deposited under section 189 in excess shall be refunded or allowed to be set off against any present or future demand of the Corporation under this Act; and</u> (b) Any deficiency shall be deemed to be an arrear of the property tax and shall be payable and recoverable as such: Provided that— (i)..... (ii) if, when such objection has been finally determined, such valuation is reduced, and if the property tax has already been paid thereon, then the sum paid in excess shall be refunded or allowed to be set-off against any present or future demand of the Corporation under this Act;

	<u>present or future demand of the Corporation under this Act.”.</u>	and iii) <u>in case of refund, if any, is to be made by the Corporation to the assessee, such refund amount shall not accrue any interest thereon.</u>
216. Presentation of Bill	<u>Sub-section (3) subsection 20 of the Kolkata Municipal Corporation (Amendment) Act, 2006 (West Ben. Act XXXII of 2006) (with effect from 1.5.2007), which was earlier amended by section 18(2) of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Bengal Act XXVI of 1997) (with effect from 22.12.1997) and finally was as under:</u> <u>“(3) On the amount of the bill remaining unpaid after thirty days of presentation of the bill under section 216 or after, expiry of the date of payment as shown in the comprehensive bill presented under sub-section (2) of section 196, simple interest at such rate as may be determined by the State Government from time to time shall be payable for the period commencing on the first day of the quarter following that in which the bill is presented and ending with the month preceding the month in which payment is made.</u> Explanation.—In calculating the interest payable under this sub-section, a fraction of a rupee in the amount of the bill on which the interest is to be calculated shall be rounded off to the nearest rupee, fifty paise being treated as rupee one.”. (emphasis supplied)	(3) On the amount of the bill or portion thereof remaining unpaid after thirty days of presentation of the bill under section 216 or after expiry of the date of payment as shown in the comprehensive bill presented under sub-section (2) of section 196, <u>simple interest at the rate of three per cent. Above the prime lending rate of the State Bank of India as prevalent on the 1st day of January of the particular calendar year where annual valuation is less than rupees one lakh, and at the rate of six per cent. Above such prime lending rate where annual valuation is rupees one lakh and above, shall be payable from time to time for the period commencing on the 1st day of quarter following that in which the bill is presented and ending with the month in which the payment is made. (emphasis supplied)</u>

Under the previous Act namely, the KMC Act, 1951 there are provisions for refund under Section 194 and 195. Section 194 deals with refund of owner's share of consolidated rate for period of vacancy and Section 195 allows refund of occupier's share of consolidated rate on fulfilment of certain conditions. Under Section 197 of the 1951 Act refund

can only be claimed provided, it is applied for within two years from the date on which the amount was paid.

It is thus clear from the aforesaid provisions that the Municipal Act was silent on payment of interest on the excess amount until the amendment made by Section 18 of the KMC (Amendment) Act, 2006 with effect from 1st May, 2007. In fact, the old Section 197 was substituted by the new section incorporated by the Amendment act. The amendment is only prospective. Presently we are concerned with the period prior to the amendment. The right to claim and receive interest arose at least on 17th March, 2004 when the writ petitioner demanded immediate refund of the excess sum, if not earlier, that was not paid until the disposal of the writ petition i.e. on 14th May, 2015. In fact, following the observation of the learned Single Judge the amount was paid within the period fixed by the said order. Accordingly, we are unable to accept the submission of Mr. Alok Ghosh that the law as prevailing on the date of disposal of the writ petition or the appeal is to be taken into consideration in deciding the right of the appellant in relation to its claim for interest. Mr. Ghosh, however, fairly submitted that if we disregard the judgment relied upon by him of the Hon'ble Supreme Court on the question of grant of interest then the ratio of both the Division Bench in **Larsen and Toubro** (supra) are to be followed and would be a fate accompli.

A claim for interest is in the nature of damages and/or compensation for the loss sustained for not being able to use and utilise the money rightfully claimed but wrongly denied. The right to receive money is a specie of property. In the impugned judgment the learned Single Judge did

not have the opportunity to consider first the Division Bench judgment on this issue which has clearly and explicitly recognised payment of interest upon accepting that Section 599 of the KMC Act, 1980 allows payment of interest on the excess amount lying deposited with the corporation. **Justice Kundu** in paragraph 18 in **Larsen & Toubro Ltd.** (*supra*) has considered Section 599 of the said Act and thereafter in paragraph 26 arrived at a conclusion. For the sake of convenience paragraphs 18 and 26 of the aforesaid judgment of **Justice Kundu** in **Larsen & Toubro Ltd.** (*supra*) is stated below:

“18. Section 599 of the said Act clearly laid down –“Save as otherwise provided in this Act, nothing contained in this Act shall be construed to authorise the Corporation or any Municipal authority of any officer or other employee of the Corporation to disregard any law for the time being in force.” No special provision is required to be made in the said Act for payment of interest on ‘refundable excess amount’ because of the Interest Act, 1978 (hereinafter referred to as the Act of 1978). The Act of 1978 prescribed the general law of interest which becomes applicable in the absence of any contractual or statutory provisions specially dealing with the subject. Admittedly in the said Act there is no provision dealing with interest to be paid or not to be paid in connection with refundable excess amount under Section 197 of the said Act. Therefore, I am of the opinion that Section 4(2)(a) of the Act of 1978 has full application in the facts and circumstances of the present case for the reasons discussed hereinabove. In my view, the company is entitled to interest on the refundable excess amount under Section 197 of the said Act, in accordance with Section 4(2)(a) of the Act of 1978.

26. In view of discussions made hereinabove it is not necessary to discuss the other points argued by the learned Advocate for the company. Section 4(2)(a) of the Act of 1978 clearly laid down that the interest should be paid from the date of deposit and accordingly in the preceding paragraph of this judgment I have discussed how the interest should be paid to the corporation.” (emphasis supplied)

The aforesaid passage was quoted with approval by both the Division Bench dealing with the issue. On 7th April, 2000 the Division Bench affirmed the view of **Justice Kundu** as His Lordship then was in rejecting the submission that in terms of Clause (a) of Sub-Section 2 of Section 197 of the KMC Act the appellant had the discretion either to refund the amount which has been paid or deposited under Section 189 in excess or set off the sum against any payment or future due of the corporation. The submission that KMC Act, 1980 is a special statute and no provision has been made therein as regards payment of interest and accordingly, the provision of the Interest Act, 1978 would have no manner of application was also not accepted on the following reasoning:

“The interest Act 1978 was enacted to consolidate and amend the law relating to the allowance of interest in certain cases. Sub-section (2) of Section 4 of Interest Act 1978 reads thus:

“4. Interest payable under certain enactments-

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions to sub-section (1), the Court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the Court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely,

(a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract from the date of deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud from the date of the cause of action;

(d) where the claim is for dower or maintenance, from the date of the cause of action.

It has not been and could not be disputed that in the absence of any provision of statute as regards payment of interest, the Interest Act, 1978 shall apply.

A person both on principle as also in equity is entitled to interest for the amount paid or deposited either in terms of the provisions of the statute or otherwise. As noticed hereinbefore, in the instant case, the writ petitioner-respondent had to deposit the consolidated rate in terms of section 189(6) of the Act. Despite the fact that the order of assessment per se was found to be arbitrary and irrational by the Tribunal, the excess amount was not refunded within a reasonable period. As indicated hereinbefore, despite demand made and reminder given thereto, authorities of the Calcutta Municipal Corporation sat tight over the matter and did not respond to the said notices. The action on the part of the appellant appears to be wholly unreasonable. The submission of Mr. Das Adhikari is that the intent and purport of the Legislature in not making any provision of interest in the Act clearly goes to show that no such interest is to be paid. We do not agree. Statute, as is well known, must be read in a fair manner and reasonably. It cannot be the intention of the Legislature that the Corporation would be run on the excess amount deposited by the owners or occupiers of the holding. Section 217 of the Calcutta Municipal Corporation Act provides for interest to be paid in favour of the Calcutta Municipal Corporation whenever a default is made by the tax payer.

If the contention of Mr. Das Adhikari is accepted as correct, it may give rise to a question as regard the constitutionality of sub-section (6) of Section 199 of the Act itself. The said provision has been held to be constitutional by this Court. However, in the instant case, as the amount has already been refunded and no option has been exercised to set off the said amount as against present and future demand, we are of the opinion that in the facts and circumstances of the case there cannot be any doubt. whatsoever that both on principle and in equity the writ

petitioner-respondent is entitled to interest in terms of the provisions of the Interest Act, 1978. The learned Trial Judge, therefore, has not committed any illegality in passing the impugned judgment and order.”
(emphasis supplied)

Subsequently, between the same parties similar dispute arose in relation to another premise in which the learned Single Judge by an order dated 26th June, 2006 refused payment of interest on the refundable excess amount and dismissed the writ petition. The said appeal was admitted on 4th December, 2006 and disposed of on 9th December, 2011 to which we have earlier made a reference. The Division Bench accepted the proposition of law with regard to the payment of interest by the learned Single Judge in **Larsen & Toubro Ltd.** (*supra*) and the Division Bench judgment that had affirmed the said decision. In fact, it is recorded in the order dated 9th December, 2011 that the decision of the earlier Division Bench in **Larsen & Toubro Ltd.** (*supra*) was unsuccessfully challenged before the Hon’ble Supreme Court. The SLP was dismissed. The fact that the SLP was dismissed is not being disputed on behalf of the KMC. Mr. Ghosh, however, has submitted that dismissal of SLP simplicitor is not a declaration of law under Article 141 of the Constitution of India as observed in **V.M. Salgaocar & Brothers Pvt. Ltd.** (*supra*). Before the later Division Bench an attempt was made by the KMC as they have done presently to have a relook at the previous decisions relying upon a host of decisions alluded to above. It is submitted that the Supreme Court decision relied before us were not cited either before **Justice Kundu** or before the first Division Bench that had affirmed the judgment of **Justice Kundu** on this issue. However, in the later co-ordinate Bench decision decided on 9th December,

2011 we find **Atul Fasteners Ltd.** (*supra*), **India Carbon** (*supra*), **Ambika Chemicals** (*supra*), **Ferrow Alloys** (*supra*) and **Orient Enterprises** (*supra*) were cited and considered by the said Division Bench.

In the first place we are unable to accept the submission on behalf of the corporation that in view of the amendment introduced in 2007 no interest can be paid or demanded by the appellant for a period prior to the date of amendment. The said amendment does not have any retrospective effect. Moreover, the amendment in our view clearly accepted the situation that in certain circumstances there may be a requirement to pay the interest on the excess amount paid but not returned within a reasonable time unless there is a claim for set off or adjustment for future bills. We have considered that statement of Object and Reasons of Bill No.23 of 2006 introduced in the **West Bengal Legislature Assembly** on 13th July, 2006 which *inter alia*, suggested amendment to Section 197. The amendment has come into effect from 1st May, 2007 although the objects & Reasons does not refer to the decision in **Larsen & Tubro Ltd.** (*supra*) but it is obvious that such amendment was necessitated due to the Division Bench judgment in **Larsen and Tubro Ltd.** (*supra*) affirming the view of **Justice Kundu**.

In **Ambika Chemicals** (*supra*) interest was claimed on the excess amount refundable of the sales tax levied or collected under Andhra Pradesh General Sales Tax Act, 1957. In view of the fact that it was an indirect tax which can be recovered and realised from the customer and not deposited under the law as contemplated under the KMC Act and the said Act by necessary implication excluded applicability of Interest Act, 1978 by

making an express provision for payment of interest on refundable amount of tax in a selective manner the said judgment has no manner of application. The later decision of the Division Bench in **Larsen & Toubro Ltd.** (*supra*) however was not challenged and KMC had accepted the judgment and paid the interest amount determined by the said Bench. The appellant having similarly placed cannot be treated differently.

In **Ferro Alloys Corporation Ltd.** (*supra*) the question of payment of interest on deposited amount made with the Electricity Board in terms of the agreement between the consumer and Electricity Board was considered and it appears that in view of the agreement under a special situation and condition it was agreed that no interest shall be paid. In the instant case, we have not come across any such agreement between the assessor and the assessee. We find that the subsequent bench decision in **Larsen & Toubro Ltd.** (*supra*) has also distinguished the said decision and held that the law is well settled in this regard and corporation ought to have refunded the amount with interest.

Mr. Dutta has strongly relied upon the judgment of the Apex Court in **TATA Chemicals** (*supra*). In **TATA Chemicals** (*supra*) the Hon'ble Supreme Court was deciding whether the revenue is legally responsible under Section 244A of the Income Tax Act, 1961 (for short, "the Act") for payment of interest on the refund of tax made to the residents/deductor under Section 240 of the Act.

In deciding the said issue the supreme Court has taken into consideration the statutory recognition of payment of interest under the

newly inserted Section 244A in allowing the prayer for grant of interest in favour of deductor/residents.

The Apex Court has taken note of a circular issued by the department clarifying the purpose and object of introducing Section 244A of the Act to replace Sections 214, 243 and 244 of the Act. By way of clarification, it has been stated that the said Section is introduced for payment of interest by the department for delay in grant of refunds. The Apex court observed:

“A general right exists in the State to refund any tax collected for its purpose, and a corresponding right exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or are believed to be, for any reason, inequitable. The statutory obligation to refund carried with it the right to interest also. This is true in the case of assessee under the Act.”

On interpretation of the relevant provisions it was observed that the rate of interest and entitlement to interest on excess tax would be determined by the statutory provisions of the Act. Interest payment is a statutory obligation and non-discretionary.

Thereafter, in allowing the claim of the M/s TATA Chemicals (*supra*) it was observed that having established that the assessee was entitled to “tax refund” and the tax recovered is in excess of the tax paid, the amount realized in excess should carry interest.

In fact Section 244A provides the instances the circumstances when right to claim refund arise and rates that an assessee can claim interest. Previously under Section 244 there was a general requirement to pay

interest @ 15 per cent per annum on the amount of refund due from the date immediately following the expiry of the period of 3 months from the date of the order of the Assessing Officer. M/s. TATA Chemicals limited having able to establish that they were entitled to interest on the refund under Section 244A there claims for interest at the statutory rate was allowed.

However, in the instant case, there is no similar provision or any provision clarifying the amendment introduced in the year 2006.

There was no such provision for payment of interest under the unamended provision. The amended provision prohibits payment of interest under the amended provision. However, our courts on the provision of unamended provision have taken a view that in view of Section 599 of the KMC Act, the provisions of the Interest Act would be applicable and interest would be payable on refundable excess amount. The appeal court in affirming the view of the learned Single Judge has also applied the general principle that payment of interest is in the nature of compensation for the use and retention of money collected unauthorizedly and when such realization is illegal there is a corresponding obligation on the KMC to refund such amount with interest for such wrongful retention and enjoyment of the said money in the aforesaid period.

Ordinarily, a coordinate bench shall not differ or take a contrary view unless the decision of the earlier bench is per incurium or sub-silentio. The doctrine of precedent shall not be ordinarily departed unless there are good and strong reasons for doing so. It is important for smooth and

systematic development of law and also for consistency. We feel that when a statute has been interpreted by learned Single Judge and two previous Division Benches of this Court concerning the issues involved in this appeal the doctrine of precedent needs to be followed. This is also another reason for which we allow the appeal and set aside the impugned order.

In the instant case, initially the appellant asked for adjustment and thereafter asked for refund from the date of deposit with interest at the rate of 12% per annum till the payment is made. However, finally on 17th March, 2004 the appellant demanded immediate refund of the excess sum of Rs.1,85,865/- along with interest within a period of 15 days from the date of receipt of the said letter.

The High Court exercises a plenary and extraordinary jurisdiction under Article 226 of the Constitution of India. Its power cannot be curtailed by any statute. Its power is as wide, expansive and infinite as the horizon and as deep as an Atlantic. However, at the same time the constitutional court over a period of time has imposed certain self imposed restrictions. Its power is extraordinary, equitable and discretionary. In the instant case, while we may find that there has been some delay in refunding the amount but having regard to the explanation offered it cannot be said that it was malafide or intentional. KMC has offered its own justification which cannot be said to be completely unmeritorious having regard to the view expressed by **Justice Bhattacharjee**. The understanding and the interpretation of the relevant provisions by KMC was subsequently held to be erroneous. It is true that the corporation for any default by an assessee charges interest at certain rate over and above the prime lending rate, however, it cannot be

ignored that KMC is not a private profit making organisation and the amounts collected are to be utilized for performing and discharging certain statutory duties and obligations and for improving the civic amenities. KMC requires fund to meet the expenses for fulfilling various objects of the Act. Moreover, recovering such interest if there is a delay in payment of rates is in terms of the statutory provisions. However this aspect of the matter has already been considered by **Justice Kundu** and thereafter by the Co-ordinate Bench in the first batch of writ petition filed by **Larsen & Toubro Ltd.** (*supra*). While we do appreciate that by reason of the later judgment in **Larsen & Toubro Ltd.** (*supra*) decided on 9th December, 2011 the KMC ought to have been more vigilant and should not have delayed refund of the amount knowing fully well that if not paid in time would attract interest and ought not to have waited till May, 2015, at the same time by taking into consideration the aforesaid factors and that the excess amount has already been refunded we allowed the appeal by directing the KMC to pay interest assessed at Rs.75,000/- to be paid within three weeks from date, in default, interest shall be paid on Rs.1,85,865 at the rate of 7% per annum (simple) from March 17, 2004 till the date of refund.

The appeal is allowed.

The judgment of the Learned Single Judge is set aside.

However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)

