HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION NO: 25705 OF 2007

Between:

Idea Cellular Limited, a Company incorporated under the, Companies Act, 1956, having its registered Office at Suman Towers, Plot No. 18, Sector No.11, Gandhi Nagar, 382011 and Circle Office at 5-9-62, K.L.K. Estate Fateh Maidan Road, Hyderabad, Rep. by its Manager Legal.

...PETITIONER

AND

1. The Commercial Tax Officer, Nampally Circle, Hyderabad.
2. The Deputy Commissioner, Abids Division, Hyderabad., Hyderabad.
3. The Commissioner of Commercial Taxes, A.P, M.J. Road, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to a) declare the inaction of the respondents in not refunding the amount of Rs. 4,07,30,731/- to the petitioner as arbitrary illegal and unjust by the issuance of a writ more particularly one in the nature of writ of Mandamus or any other appropriate writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case b) consequently further direct the Respondents to refund an amount of Rs. 4,07,30,731/- along with interest or 12% p.a. from the respective dates of deposit of amounts by the petitioner pursuant to the interim orders of the Hon'ble Courts, which works out to Rs. 2,40,03,650/- as on the date of filing of the writ petition and also with furture interest till the actual realisation by the petitioner, and pass such further or other order(s) as may be deemed fit and proper in the peculiar facts and circumstances of the case while awarding costs of these proceedings and render justice.

I.A. NO: 1 OF 2007(WPMP. NO: 33481 OF 2007)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents herein to release the amounts withheld illegally in favour of the petitioner, pending disposal of the writ petition.

Counsel for the Petitioner: SRI SUMANTH CHANDA FOR SRI LAKSHMI KUMARAN SRIDHARAN

Counsel for the Respondents: SRI T.CHAITANYA KIRAN FOR SPL. GP FOR STATE TAX

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION No.25705 OF 2007

ORDER: (per Hon'ble Sri Justice Sujoy Paul)

Sri Sumanth Chanda, learned counsel representing Sri Lakshmi Kumaran Sridharan, learned counsel for the petitioner and Sri T.Chaitanya Kiran, learned counsel representing learned Special Government Pleader for State Tax for the respondents.

2. With the consent, finally heard.

3. In this petition, initially, the prayer was made for refund of the amount as well as payment of interest, but, learned counsel for the petitioner informed that during the pendency of the case, the respondents have already refunded the principal amount. Thus, the petitioner has only shown interest for grant of interest on the said principal amount.

4. Briefly stated, the relevant facts are that on 25.09.2002 (Annexure P-1), the respondents imposed a tax of Rs.4,07,30,731/- on the petitioner under the **Andhra Pradesh General Sales Tax Act, 1957** (for short **"the Act"**). The petitioner unsuccessfully challenged the said order before this Court in W.P.No.19535 of 2002, which came to be dismissed on 14.03.2003. Aggrieved, the petitioner filed SLP.No.5447 of 2003. The Supreme Court, as an interim order, directed the petitioner to

deposit the said amount. Learned counsel for the petitioner submits that the said amount was deposited in installments in following manner:-

Date of payment	Amount—Rs.
18.03.2003	50,00,000/-
14.05.2003	25,00,000/-
20.05.2003	25,00,000/-
29.05.2003	50,00,000/-
10.06.2003	25,00,000/-
20.06.2003	25,00,000/-
29.10.2003	50,00,000/-
28.11.2003	75,00,000/-
29.12.2003	75,00,000/-
29.01.2004	7,30,731/-
	4,07,30,731/-

5. It is submitted that the said SLP was converted into Civil Appeal No.1403 of 2006. The Civil Appeal was allowed in terms of orders passed by the Supreme Court in **Bharat Sanchar Nigam Limited** v. **Union of India**[1] (see **Asst. Commissioner, Trade Tax** v. **General Manager, BSNL**[2]). In obedience of the Supreme Court's order, the respondents refunded the principal amount of Rs.4,07,30,731/- to the petitioner on 24/25.04.2012.

6. Learned counsel for the petitioner by placing reliance on Section 33-B of the Act submits that in a case of this nature, where, in Appeal, the Supreme Court directed refund of the amount to the assessee, the Department was required to pay the said amount, without there being any claim submitted on behalf of the petitioner. Section 33-F of the Act is relied upon to submit that where the Department fails to grant the

[1] 2006 (3) TMI 1 - SC
[2] (2006) 3 SCC 48

refund within a period of six months from the date of appellate order, the State Government is bound to pay the assessee, a simple interest @ 12% per annum on amount of refund due from the date, immediately following the expiry of period of six months aforesaid, to the date on which refund is granted.

7. The bone of contention of the learned counsel for the petitioner is that the respondents were bound to refund the amount within six months from the date of the order of the Supreme Court i.e., 02.03.2006. They refunded the amount only on 25.04.2012. The petitioner is entitled to get the amount of interest from 02.09.2006 i.e., six months from the order of the Supreme Court.

8. Learned counsel for the respondents, on the other hand, submitted that by the assessment order dated 28.03.2012, the amount was decided to be refunded and accordingly, refund was made on 24.04.2012. Thus, the claim of interest is without any basis.

9. The parties confined their arguments to the extent indicated above.

10. We have heard the parties on this limited aspect of grant of interest.

11. Before, dealing with the rival contentions, it is apposite to consider the relevant statutory provisions.

Section 33-B. Refund on appeal, etc;-

> "Where **as a result of any order passed in appeal** or other proceeding under this Act, refund of any amount becomes due to the assessee or licensee, the assessing or licensing authority shall refund the amount to the assessee or licensee **without his having to make any claim in that behalf**, or adjust or apply, such amount as provided in Section 33."

<u>Section 33-F. Interest on refund where no claim need be made:-</u>

> " (1) Where a refund is due to the assessee or licensee in pursuance of an order referred to in Section 33-B and the assessing or the licensing **authority does not grant the refund within a period of [3][Six months] from the date of such order, the State Government shall pay to the assessee or the licensee simple interest at [4][twelve percent] per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted."**

12. A plain reading of Section 33-B of the Act makes it clear that when refund is as a result of order passed in an appeal or other proceedings, the amount must be paid without there being any claim preferred in that behalf by the assessee or licensee. In the instant case, Section 33-B of the Act is applicable with full force. Admittedly, the order dated 02.03.2006 was passed by the Supreme Court, pursuant to which, refund was necessitated. Section 33-F of the Act talks about grant of interest, where no claim needs to be made. As noticed above, in a case of this nature, where the petitioner has succeeded in appeal from the Supreme Court, no claim was required to be made. Thus, Section 33-F of the Act is squarely applicable in the instant case. A simple reading of this provision makes it clear that if, an order as per Section 33-B of the Act is passed (i.e., order of the Supreme Court in the instant case) and

[3] Subs. for the words "twelve months" by Act 5 of 1974, w.e.f. 1.3.1974.
[4] Subs. for the words "six per cent" by Act 19 of 1986, w.e.f. 01.08.1986.

the authority does not grant refund within a period of six months from the date of appellate order, the state Government is bound to pay simple interest @ 12% per annum on the amount of refund due from the date immediately following the expiry of period of six months to the date on which refund is granted.

13. A conjoint reading of Section 33 B and 33-F of the Act shows that the argument of learned counsel for the petitioner has substantial force. There is a statutory mandate ingrained in Section 33-B and Section 33-F of the Act to pay the statutory interest @ 12% per annum, after six months from the date of passing of the judgment of the Appellate Court, till the date of actual refund i.e., 24.04.2012. Thus, the respondents are directed to calculate and pay the said interest to the petitioner. The entire exercise of calculation and payment of interest to the petitioner shall be completed within (90) days from the date of communication of this order.

14. Accordingly, the Writ Petition is **allowed**. No costs. Interlocutory applications, if any, pending shall also stand closed.

SD/-MOHD. ISMAIL
ASSISTANT REGISTRAR

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5. The Deputy Commissioner, Abids Division, Hyderabad., Hyderabad.
6. The Commissioner of Commercial Taxes, T.S., M.J. Road, Hyderabad.
7. One CC to SRI LAKSHMI KUMARAN SRIDHARAN, Advocate [OPUC]
8. One CC to SRI T.CHAITANYA KIRAN, Advocate [OPUC]
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CHR

HIGH COURT

DATED:10/09/2024

ORDER

WP.No.25705 of 2007

ALLOWING THE WRIT PETITION WITHOUT COSTS.

(13) +10 CHR
4/12/24