

SUPREME COURT OF INDIA

U.P. POLLUTION CONTROL BOARD AND OTHERS

Vs.

M/S. KANORIA INDUSTRIAL LTD. AND ANOTHER

: 24/01/2001

(S.V.Patil, S.R.Babu)

Special Leave Petition (civil) 4436-4437 of 1998

Special Leave Petition (civil) 5241-5242 of 1998

Special Leave Petition (civil) 12654 of 1998

JUDGMENT

Shivaraj V. Patil, J.

In all these cases the controversy raised relates to the claim of refund of the amount paid by the respondents as water cess under the provisions of the Water (Prevention and Control of Pollution) Cess Act, 1977 (for short the Act). Briefly stated, the facts leading to the filing of these petitions are: The respondents are the owners of industrial units manufacturing sugar from sugarcane and liquor/alcohol from molasses, a by-product. On demand made by the State Government under the provisions of the Act they were required to pay water cess. They protested against the demand principally contending that sugar industry and distillery were not industries covered by Entry No. 15 of Schedule I of the Act and consequently they were neither liable to submit any return nor to make any payment of water cess; when their protests were not accepted and the demand persisted for payment of water cess the respondents paid the amount under protest. Some of them filed writ petitions Nos. 3558 of 1980, 494 of 1980 and 17646 of 1986. The writ petitions came to be dismissed. Thereafter, special leave petitions were filed before this Court, which were disposed by judgment in M/s. Saraswati Sugar Mills vs. Haryana State Board and others [(1992) 1 SCC 418], reversing the decision of the High Court and holding that the sugar manufacturing industries did not fall within Entry 15 of Schedule I of the Act. After the said judgment was rendered by this Court representations were made to the Board and the Cess Officer/Assessing Authority of the Board for refund of the amounts illegally and without the authority of law realized by them as water cess. Despite several representations there was no response from the Board and its authorities. Hence the writ petitions were filed consequent upon law declared by this Court in Saraswati Sugar Mills case (supra) seeking a mandamus to the petitioners to refund the amount collected from them as cess with interest @ 18% per annum. In the writ petitions it was contended that the writ petitioners themselves have paid the amount as water under protest and they had not passed on the liability to the customers. The petitioners contested the claim made by the respondents before the High Court. They filed the counter affidavit in the High Court, in short taking the stand that the respondents were not entitled to refund of any amount from the Board for the reasons that after collection, the amount has been paid to the State Government, which in turn has paid the amount to the Government of India; referring to the representations of the respondents it was stated that a reference had been made to the State Government in the matter and their reply was awaited; after

Corporation and another [(1989) 4 SCC 640] it is held that a tax or money realized without authority of law is bad under Article 265 of the Constitution and that the money or tax so collected are refundable. In that case octroi was levied and collected in respect of goods on their mere physical entry into the city limits, which were not used or consumed or sold within the municipal limits. This Court, dealing with the refund in para 12 of the judgment, held thus: - We see no ground as to why amount should not be refunded. Realisation of tax or money without the authority of law is bad under Article 265 of the Constitution. Octroi cannot be levied or collected in respect of goods which are not used or consumed or sold within the municipal limits. So these amounts become collection without the authority of law. The respondent is a statutory authority in the present case. It has no right to retain the amount, so far and so much. These are refundable within the period of limitation. There is no question of limitation. There is no dispute as to the amount. There is no scope of any possible dispute on the plea of undue enrichment of the petitioners. We are, therefore, of the opinion that the Division Bench was in error in the view it took. Where there is no question of undue enrichment, in respect of money collected or retained, refund, to which a citizen is entitled, must be made in a situation like this.

[emphasis supplied]

This case fully supports the submissions made on behalf of the respondents. Similar view was taken by this Court in *Salonah Tea Company Ltd. Etc., vs. The Superintendent of Taxes, Nowgong and others, etc.* [AIR 1990 SC 772]. Para 6 of the said judgment reads: - 6. The only question that falls for consideration here is whether in an application under Article 226 of the Constitution the Court should have directed refund. It is the case of the appellant that it was after the judgment in the case of *Loong Soong Tea Estate* the cause of action arose. That judgment was passed in July 1973. It appears thus that the High Court was in error in coming to the conclusion that it was possible for the appellant to know about the legality of the tax sought to be imposed as early as 1963, when the Act in question was declared ultra vires as mentioned hereinbefore. Thereafter the taxes were paid in 1968. Therefore the claim in November, 1973 was belated. We are unable to agree with this conclusion. As mentioned hereinbefore the question that arises in this case is whether the Court should direct refund of the amount in question. Courts have made a distinction between those cases where a claimant approaches a High Court seeking relief of obtaining refund only and those refund were sought as a consequential relief after striking down of the order of assessment etc. Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally, as a corollary of the said statement of law it follows that taxes collected without the authority of law as in this case from a citizen should be refunded because no State has the right to receive or to retain taxes or monies realized from citizens without the authority of law.

[emphasis supplied]

In the para extracted above, in a similar situation as@@@ II arising in the present cases relating to the very question of refund, while answering the said question affirmatively, this Court pointed out that the courts have made distinction between those cases where a claimant approached a High Court seeking relief of obtaining refund only and those where refund was sought as a consequential relief after striking down of the order of assessment etc. In these cases also the claims made for refund in the writ petitions were consequent upon declaration of law made by this Court. Hence, High Court committed no error in entertaining the writ petitions. This Court again in *Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Vs. State of Bihar and others* [(1996) 6 SCC 86], held that such a writ petition even if assumed to be only for money was maintainable under Article 226 of the Constitution

should have been made within a reasonable time thereafter. In ascertaining what is the reasonable time for claiming refund, the courts have often taken note of the period of limitation prescribed under the general Law of Limitation for filing of suits for recovery of amount due to them. In the present case also that standard adopted by the High Court is the same in ascertaining whether there has been laches on the part of the appellant in seeking relief in due time or not. The finding clearly recorded is that long after the charges had been paid and law had been declared by the Court, the writ petition has been filed and, therefore, such a refund should not be allowed. We do not think such a view taken by the High Court calls for interference under Article 136 of the Constitution. Hence we dismiss the petition.

It is clear from the said paragraph that a distinction is made between the claims made for refund where collection of tax was illegal and not authorized and the cases where rule had been struck down on the ground that it had been framed inarticulately and was not clear enough. Further it is only noticed that in ascertaining as to what is the reasonable time for claiming refund, the courts have often taken note of the period of limitation prescribed under the general Law of Limitation for filing suits for recovery of the amount due to them. In exercise of writ jurisdiction, facts and circumstances of each case are to be kept in mind in ascertaining whether there have been laches on the part of the parties seeking relief in due time or not. In these cases having regard to the facts and circumstances already stated above, it cannot be said that there were laches on the part of the respondents or that they had abandoned their claim for refund. In *Sales Tax Officer, New Delhi vs. East India Hotels Ltd.* And another [(1998) 9 SCC 662] the appellant authority charged sales tax on the sales thereof prior to the judgment of this Court in *Northern India Caterers (India) Ltd. Vs. Lt. Governor, Delhi* [(1978) 4 SCC 36]. A fresh assessment order was passed thereafter on the basis of the revised return filed by the first respondent. Ultimately an order was passed holding that the first respondent had made application for refund of the excess amount paid within the permissible period. When no action was taken for long period, a writ petition was filed praying for writ of mandamus directing the authority to refund the amount with interest thereon. The High Court allowed the writ petition finding that no further consideration was required and that the defence of unjust enrichment was not maintainable. On the facts of the case, this Court allowed the appeal and directed the Sales Tax authorities to hear the first respondent on the refund application and dispose of the same within a given time. It appears that other cases referred to above were not brought to the notice of this Court. Thus we find that the said case governs its own facts. Hence we reject the contentions advanced on behalf of the petitioner as to the maintainability of the writ petitions. This Court in *M/s. Dehri Rohtas Light Railway Company Ltd. Vs. District Board, Bhojpur and others* [(1992) 2 SCC 598], dealing with a case where demand was made for refund in somewhat similar circumstances on the question of delay and laches, in para 13, has stated thus: - The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches.

The argument that the relief should be denied to the respondents on the ground of delay and laches

in approaching the High Court by filing writ petitions claiming refund is equally unsustainable. The claims for refund were made by the respondents within a reasonable time after the judgment was rendered by this Court in Saraswati Sugar Mill case aforementioned. The respondents have paid water cess under protest. The collection of water cess in view of law laid down by this court was clearly illegal and without authority of law. It is also not the case that where the rights are created in third parties on account of delay, if any, in approaching the court and that by entertaining the writ petitions rights of third parties are prejudiced. In this view there was no question of delay and laches on the part of the respondents on the facts found and circumstances stated. The respondents had specifically pleaded that they did not pass on the liability of the water cess on their customers; it appears this contention was not denied by the petitioners before the High Court. On the other hand the only plea taken by the petitioners was that money had been passed to the Central Government under Section 8 of the Act. It was brought to the notice of the Court by the respondents that 65% of the sugar was sold by the respondents through public distribution system under the Essential Commodities Act. Hence there was no question of unjust enrichment also in these cases. The stand of the petitioners that the respondents were not entitled for refund on the ground that the amount of cess collected was passed on to the State Government, which in turn gave it to the Central Government and the Central Government has appropriated the same by passing on money back to various State Pollution Control Boards does not help them. Before the High Court, they only stated that they made reference to the Government in regard to the claim made by the respondents for refund and they were waiting for response. It was also not made out by the petitioners as to how they had difficulties in making the refund to the respondents. It may also be kept in view that immediately after the notices were issued demanding water cess they were challenged. Even in some cases interim orders were also passed in the High court; the amount of water cess was paid under protest. So, in this situation when finally this Court held that the very collection of water cess was without the authority of law, the claim of the respondents for refund cannot be denied merely on the ground that the petitioners passed on the money to the State Government and in turn the money was sent to the Central Government and later the Central Govt. appropriated the same by passing it back to the various State Pollution Control Boards. The High Court in our view having taken all aspects into consideration was right in allowing the claims of the respondents made for refund in the writ petitions. We do not see any good ground or valid reason to interfere with the judgments and orders of the High Court impugned in these petitions. Hence the special leave petitions are dismissed. The parties shall bear their own costs.