

**SURPEME COURT OF INDIA**

Commissioner of Income Tax, Delhi-VI

Vs.

M/s Oriental Insurance Co. Ltd.

C.A.No.4521 of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

18.07.2008

**JUDGMENT**

**Dr. Arijit Pasayat, J**

1. Leave granted.

2. In all these appeals, identical questions are involved. The assessee in each case is an insurance company and is covered by the *Insurance Act, 1983* (in short the 'Insurance Act'). According to the appellant every insurance company has to be assessed under Section 44 of the *Income Tax Act, 1961* (in short the 'Act') as per Rule 5 of the First Schedule. An assessment was made in each case and the same was upheld by the Commissioner of Income Tax (Appeals). The Income Tax Appellate Tribunal (in short the 'Tribunal') deleted the addition made. The Tribunal accepted the stand of the respondent- insurance company. Certain other connected cases were also dealt with. In all these appeals the question is whether the Department would prefer appeals and/or file petitions without obtaining clearance from the Committee of Disputes (in short 'COD') constituted in terms of order of this Court. According to the High Court it was necessary to refer the matter to the said Committee. The High Court held that the same was to be done within a period of one month in terms of the order of this Court in *Oil and Natural Gas Commission v. Collector of Central Excise*<sup>1</sup>. Accordingly the appeals were dismissed.

3. The High Court held that since this Court had set the time frame there is no scope for any deviation therefrom.

4. Learned counsel for the appellant submitted that there is really no statutory and/or rigidly framed time limit. This Court only highlighted the desirability of early action so that unnecessary litigation can be avoided.

5. Learned counsel for the respondent submitted that in some cases the concerned Committee has also declined to grant permission and those appeals have become infructuous. In *Oil and Natural Gas Commission's case* (supra) this Court observed as follows:

"5. It is also clarified that even the pending matters before any court or tribunal should also be the subject-matter of the deliberations of the High-Powered Committee. All the matters pending as of today either instituted by the Union of India or any of the public sector undertakings shall within one month from today be referred by the appellant or the petitioner, as the case may be, to the High-Powered Committee. The High-Powered Committee will deal with these matters most expeditiously and endeavour to resolve the matters.

6. Accordingly, there should be no bar to the lodgement of an appeal or petition either by the Union of India or the public sector undertakings before any court or tribunal so as to save limitation. But, before such filing every endeavour should be made to have the clearance of the High-Powered Committee.

7. However, as to what the court or tribunal should do if such judicial remedies are sought before such a court or tribunal, the order of 11-10-1991 clarifies: (SCC p. 542, para 4)

"4. It shall be the obligation of every court and every tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with."

8. Wherever appeals, petitions, etc. are filed without the clearance of the High-Powered Committee so as to save limitation, the appellant or the petitioner, as the case may be, shall within a month from such filing, refer the matter to the High-Powered Committee, with prior notice to the designated authority in the Cabinet Secretariat of the Government of India authorised to receive notices in that behalf. Shri K.T.S. Tulsi, learned Additional Solicitor General stated that in order to coordinate these references of the High-Powered Committee the Government proposes to nominate the Under-Secretary (Coordination) in the Cabinet Secretariat as the nodal authority to coordinate these references. The reference shall be deemed to have been made and become effective only after a notice of the reference is lodged with the said nodal authority. The reference shall be deemed to be valid if made in the case of the Union of India by its Secretary, Ministry of Finance, Department of Revenue, and in the case of public sector undertakings by its Chairman, Managing Director or Chief Executive, as the case may be. It is only after such reference to the High-Powered Committee is made in the manner indicated that the operation of the order or proceedings under challenge shall be suspended till the High-Powered Committee resolves the dispute or gives clearance to the litigation. If the High-Powered Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation." (Underlined for emphasis)

6. Referring to the order passed by this Court on 11.10.1991 i.e. *Oil and Natural Gas Commission and Anr. V. Collector of Central Excise*<sup>2</sup>, this Court held that in the matter

of setting up of the function of the High Powered Committee for resolving disputes between Union of India on one hand and Public Undertaking on the other required some clarification as some misconception arose.

7. In *ONGC Case No. I i.e. (Supra)* in para 3 it was noted as follows:

"We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

8. In para 4 it was further observed as follows:

"It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with."

9. Subsequently, the disputes involving the State Governments and the Public Sector Undertakings have been considered by this Court and one such matter was dealt with in *Oil and Natural Gas Corporation Ltd. V. City & Industrial Development Corporation, Maharashtra Ltd. And Ors.*<sup>3</sup>.

10. It needs to be emphasized that there was actually no rigid time frame indicated by this Court. The emphasis on one month's time was to show urgency needed. Merely because there is some delay in approaching the Committee that does not make the action illegal. The Committee is required to deal with the matter expeditiously so that there is no unnecessary backlog of appeals which ultimately may not be pursued. In that sense, it is imperative that the concerned authorities take urgent action otherwise the intended objective would be frustrated. There is no scope for lethargy. It is to be tested by the Court as to whether there was any indifference and lethargy and in appropriate cases refuse to interfere. In these cases factual position is not that. Therefore, we set aside the order of the High Court in each case and direct consideration of the question of desirability to proceed in the matter before it on receipt of the report from the concerned Committee.

11. Learned counsel for the appellant submitted that even if the Committee has declined to grant permission it is still open to raise the issues in appropriate proceedings. We express no opinion in that regard. But where the Committee has declined to deal with the matter on the

ground of belated approach, the same cannot be sustained in view of our present order. The Committee has to consider the matter on merits.

12. It is to be noted that where permission has been granted by the Committee there is no impediment on the Court to examine the matter and take a decision on merits. But where there is no belated approach as noted above, the matter has to be decided. Court has to decide whether because of unexplained delay and lethargic action it would decline to entertain the matters. That would depend on the factual scenario in each case, and no straight jacket formula can be adopted.

13. The appeals are accordingly allowed to the aforesaid extent. There will be no order as to costs.

<sup>1</sup>(2004 (6) SCC 437)

<sup>2</sup>(1995 Supp (4) SCC 541)

<sup>3</sup>(2007 (7) SCC 39)