

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7915 OF 2004

|State of Punjab & Anr. | ..Appellant(s) |

Versus

|M/s. Nijjar Agro Food Ltd. | ..Respondent(s) |

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Punjab & Haryana in Civil Writ Petition No. 12184 of 2003, dated 14.10.2003. By the impugned judgment and order, the High Court has directed the State Government to pay statutory rate of interest to the respondent for the period when the Revenue had encashed bank guarantee till the fresh order was passed by the Assistant Excise and Taxation Commissioner, dated 14.08.2003.

2. The brief facts are: the goods of respondent firm in transit were detained during the roadside checking under Section 14-B of the Punjab General Sales Act, 1948 (for short, "the Act") by the Enforcement Wing on 26.11.1999. On enquiry, certain infirmities were found in the goods receipt and sale invoices. A case of attempt to evade tax on the consignment by the dealer through ingenuine documents had surfaced and proceedings were initiated against the respondent. During the pendency of the aforesaid proceedings, in order to get the goods released, the respondent had furnished a bank guarantee for a sum of Rs.1,10,000/- as provided under Section 14-B(6) of the Act. The Assistant Excise and Taxation Commissioner, Amritsar, Punjab having found the aforesaid charge as proved had passed an order dated 02.03.2000, levying a penalty of Rs.1,10,000/- on the respondent under Section 14-B(7) of the Act.

3. Being aggrieved by the aforesaid order passed by the Assistant Excise and Taxation Commissioner, the respondent had preferred an appeal before the First Appellate Authority. The said authority had allowed the appeal and remanded the matter to the Assistant Excise and Taxation Commissioner to pass a fresh order in accordance with law by order dated 04.05.2001.

4. In the meanwhile, the Revenue had recovered the amount of penalty levied by order dated 02.03.2000 by encashing the bank guarantee.

5. After the orders passed by the First Appellate Authority, a fresh order was passed by the Assistant Excise and Taxation Commissioner imposing a penalty of Rs.1,10,000/-, dated 14.08.2003.

6. Aggrieved by the aforesaid, the respondent had approached the High Court in Civil Writ Petition No. 12184 of 2003, inter alia, seeking the refund of penalty already collected by the Revenue. The

High Court while refusing to grant the relief to the respondent in view of the fresh order passed by the Assistant Excise and Taxation Commissioner, dated 14.08.2003, has directed the Revenue to pay statutory rate of interest on the amount encashed from the date of encashment of the bank guarantee till 14.08.2003.

7. Aggrieved by the aforesaid judgment and order of the High Court, the Revenue is before us in this appeal against the direction of the High Court for payment of interest on the encashed amount of bank guarantee.

8. We have heard both learned counsel for the parties to the lis and perused the documents on records.

9. The facts are not in dispute. Admittedly, an order was passed imposing a penalty of Rs.1,10,000/- by the Assistant Excise and Taxation Commissioner for release of goods seized. The respondent had furnished bank guarantee for the aforesaid amount and got the seized goods released. It is also not in dispute that the respondent had filed an appeal before the first appellate authority who had passed an order allowing the appeal and set aside the order of penalty and remanded the matter for fresh consideration. The fresh order passed by the Assistant Excise and Taxation Commissioner had upheld the charges against the respondent and levied the penalty of Rs.1,10,000/-. During the pendency of the appeal, the revenue had encashed Bank Guarantee. Since that had not been returned, the assessee had approached the High Court for the reliefs indicated by us earlier. While rejecting the reliefs sought, the Court has directed the Revenue to pay interest at statutory rate to the respondent on the encashed amount from the date of encashment to 14.08.2003, i.e., the date of fresh order by the Assistant Excise and Taxation Commissioner.

10. In the normal course, the Revenue ought to have returned/refunded the amount collected by it within the period prescribed under the Act. If such refunds are not so made, the Revenue would be liable for payment of interest on the said refund amount.

11. We have already noticed that in the instant case the respondent had succeeded before the First Appellate Authority and thereby the order imposing penalty had been set aside. Therefore, there was a statutory obligation on the Revenue to have refunded the money. They ought not to have retained the amount till the fresh order was passed by the Assistant Excise and Taxation Commissioner. In that view of the matter, the High Court had rightly directed the Revenue to pay interest from the date of realization of the bank guarantee till a fresh order is passed.

12. In light of the aforesaid, we are of the considered opinion that the High Court has not erred in any manner whatsoever and therefore the appeal requires to be dismissed.

13. The appeal is disposed of accordingly.

.....J.
[H.L. DATTU]

.....J.
[DIPAK MISRA]

.....J.
[S.A. BOBDE]

NEW DELHI,
JANUARY 09, 2014.

ITEM NO.106

COURT NO.3

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7915 OF 2004

STATE OF PUNJAB & ANR.

Appellant (s)

VERSUS

M/S. NIJJAR AGRO FOOD LTD.

Respondent(s)

(With office report)

Date: 09/01/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. Kuldip Singh, Adv.
Mr. Mohit Mudgil, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order.

	[Charanjeet Kaur]		[Vinod Kulvi]	
Court Master		Asstt. Registrar		

[Signed order is placed on the file]