

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO 1907/2020
(Arising out of Special Leave Petition (C) No 21231/2014)

M/s BHUBANESWAR CLUB

APPELLANT(S)

VERSUS

COMMISSIONER OF COMMERCIAL TAXES & ANR.

RESPONDENT(S)

ORDER

Leave granted.

This appeal arises from an interim order of a Division Bench of the High Court of Orissa in Misc Case No 9418 of 2014 in WP (C) No 10425 of 2014. The High Court directed that the penalty imposed on the appellant shall be kept in abeyance on the appellant depositing the entire tax demanded with the Department within a period of four weeks, without prejudice to the rights and contentions of the parties. The total demand under the provisions of the Orissa Value Added Tax Act 2004 for the period from 1 April 2009 to 31 March 2010 was quantified in a notice of demand dated 20 March 2014 (Annexure P-11 to the Special Leave Petition) as follows:

Tax due as per order dated 20/03/2014	Rs.65,57,176.00
Penalty U/S 52(1) as per order dt Penalty U/S 44(1) as per order dated 20/03/2014	Rs.65,57,176.00

Penalty U/S-as per order dated Interest U/S 34(1) as per dated Any other amount due as per order	Nil
Total	Rs.1,31,14,352.00

While issuing notice on 19 August 2014 this Court directed the appellant to deposit an amount of Rupees Nine lacs with the Sales Tax Officer upon which no coercive steps were to be taken to recover the amount in excess of Rupees Nine lacs.

Learned counsel appearing on behalf of the appellant submits that in view of the three judge Bench decision of this Court in State of West Bengal and others v Calcutta Club Limited,¹ the principle of mutuality has been affirmed.

Having regard to the facts and circumstances of the present case, we modify the order of the High Court by directing that in view of the deposit of Rupees Nine lacs which has been made by the appellant with the Sales Tax Officer, there shall be a stay on the recovery of the balance both towards tax and penalty pending the disposal of the writ proceedings before the High Court.

The appeal is, accordingly, disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Ajay Rastogi]

New Delhi;
MARCH 2,2020

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO 1908/2020
(Arising out of Special Leave Petition (C) No 21628/2014)**

M/s BHUBANESWAR CLUB

APPELLANT(S)

VERSUS

COMMISSIONER OF COMMERCIAL TAXES & ANR.

RESPONDENT(S)

ORDER

Leave granted.

This appeal arises from an interim order of a Division Bench of the High Court of Orissa in Misc Case No 9417 of 2014 in WP (C) No 10424 of 2014. The High Court directed that the entire tax demand shall be deposited with the department by the appellant within a period of four weeks without prejudice to the rights and contention of the parties. The total demand under the provisions of the Orissa Value Added Tax Act 2004 for the period from 1 April 2008 to 31 March 2009 was quantified in a notice of demand dated 20 March 2014 (Annexure P-11 to the Special Leave Petition) as follows:

Tax due as per order dated 20/03/2014	Rs. 42,48,371.00
Penalty U/S 52(1) as per order dt Penalty U/S 44(1) as per order dated 20/03/2014	Rs. 42,48,371.00
Penalty U/S-as per order dated Interest U/S 34(1) as per dated Any other amount due as per order	Nil

Total	Rs. 84,96,742.00
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While issuing notice on 19 August 2014 the Court directed the appellant to deposit an amount of Rupees thirteen lacs with the Sales Tax Officer upon which no coercive steps were to be taken to recover the amount in excess of Rupees thirteen lacs.

Learned counsel appearing on behalf of the appellant submits that in view of the three judge Bench decision of this Court in *State of West Bengal and others v Calcutta Club Limited*,² the principle of mutuality has been affirmed.

Having regard to the facts and circumstances of the present case, we modify the order of the High Court by directing that in view of the deposit of Rupees thirteen lacs which has been made by the appellant with the Sales Tax Officer, there shall be a stay on the recovery of the balance both towards tax and penalty pending the disposal of the writ proceedings before the High Court.

The appeal is, accordingly, disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Ajay Rastogi]

New Delhi;
MARCH 2, 2020

ITEM NO.46

COURT NO.8

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 21231/2014

(Arising out of impugned final judgment and order dated 25-06-2014 in MC No. 9418/2014 25-06-2014 in WP No. 10425/2014 passed by the High Court Of Orissa At Cuttack)

BHUBANESHWAR CLUB

Petitioner(s)

VERSUS

COMMISSIONER OF COMMERCIAL TAXES & ANR.

Respondent(s)

WITH

SLP(C) No. 21628/2014 (XI-A)

Date : 02-03-2020 These petitions were called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Ms. Rajdipa Behura, Adv.
Mr. A. Venayagam Balan, AOR
Ms. V.S. Lakshmi, Adv.
Ms. Hansika, Adv.
Philoman, Adv.
Ms. Neha Lingwal, Adv.
Mr. Ashray Behura, Adv.

For Respondent(s) Mrs. Kirti Renu Mishra, AOR
Ms. Apurva Upamanyu, Adv.

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

SLP(C) No(s). 21231/2014

Leave granted.

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

Pending application(s), if any, stands disposed of accordingly.

SLP(C) No. 21628/2014

Leave granted.

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

Pending application(s), if any, stands disposed of accordingly.

**(ASHWANI KUMAR)
COURT MASTER (SH)**

**(SAROJ KUMARI GAUR)
BRANCH OFFICER**

(Two signed orders are placed on the file)