
(1997) 08 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 663 of 1996

Babu Ram Daya Nand Prakash

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 29, 29(1), 29(2)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 99

Citation : (2003) 133 STC 139

Hon'ble Judges : Om Prakash, J; M.C. Agarwal, J

Bench : Division Bench

Advocate : Ashok Kumar, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri Ashok Kumar, counsel for the petitioners, and the learned Standing Counsel.
2. The short question for consideration in this writ petition is whether the petitioner is entitled to interest on belated payment(s).
3. The contention of the petitioner is that it became entitled to refund of Rs. 14,195 as a result of the order dated February 27, 1993, passed by the Trade Tax Tribunal. Thereafter, an order to refund the amount came to be passed on February 7, 1996. Pursuant to that order, a refund voucher was prepared on March 14, 1996, which was issued by the respondent on June 15, 1996. As a voucher is valid only for a period of 60 days under Rule 99 of the U.P. Trade Tax Rules, the voucher dated March 14, 1996, was dishonoured by the bank, as that was presented much beyond the period of validity. The respondent then prepared another voucher on August 29, 1996, which is said to have been despatched on November 13, 1996, and that, according to the petitioner, was received on November 16, 1996. The second voucher dated August 29, 1996, also suffered from the same infirmity and, therefore, that too was dishonoured by the bank.

4. Counsel for the petitioner states before us that the amount was refunded to the petitioner somewhere after May 5, 1997. The actual date of refund is not stated in the writ petition.

5. To see the liability of the respondent to pay interest, it will be appropriate to peruse Section 29 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act"). Section 29(1) of the Act provides that the assessing authority shall, in the manner prescribed, refund to a dealer any amount of tax, fees or other dues paid in excess of the amount due from him under the Act. Sub-section (2) further provides that if the amount to be refunded in accordance with subsection (1) is not refunded as aforesaid within three months from the date of order of refund passed by the assessing authority, or as the case may be, from the date of receipt by him of the order of refund, if such order is passed by any other competent authority or court, the dealer shall be entitled to simple interest on such amount at the rate of eighteen per cent per annum from the date of such order.

6. From a perusal of Sub-section (2) of Section 29 of the Act, it is manifest that when some amount becomes due and that is not refunded then the interest will become due after the expiry of three months from the due date of refund. If the order of refund is passed by some other authority then Sub-section (2) provides that a period of three months will be reckoned from the date of receipt of the order.

7. In the instant case, the final order was passed by the Tribunal and the petitioner became entitled to refund thereunder. We have gone through the counter-affidavit, filed by the respondent. No averment has been made in the counter-affidavit anywhere that the order of the Appellate Tribunal was received by the respondent in the year 1996 when the order to refund was passed. Therefore, we will be fully justified in assuming that the order of the Appellate Tribunal was received by the respondent, who passed the order for refund, within a reasonable time. As a consequence of the order of the Appellate Tribunal, the respondent should have refunded the amount within three months from the date of the order. In the counter-affidavit, it is averred that there was no deliberate delay on the part of the respondent, but whatever delay was caused that was only procedural. Nothing useful turns upon this plea, taken by the respondent. For procedural delay, law already contemplates a margin of three months, as stated in Sub-section (2) of Section 29 of the Act.

8. From a perusal of the record it is patent that the refund was delayed without any justification. The respondent took the order without any seriousness. The order of refund came to be passed on February 7, 1996, while the order made by the Appellate Tribunal is dated February 27, 1993. This is not the end of the story. The voucher, for the first time, was prepared on March 14, 1996, and that was very callously issued on June 15, 1996, that is, after the expiry of the validity period and, therefore, the refund voucher was dishonoured by the bank. Same thing was repeated by the respondent again. The second voucher was

prepared on August 29, 1996, and that was despatched only on November 13, 1996, that is, after the expiry of the validity period.

9. From the above stated facts, it is clear that the payment was delayed by the respondent without any reasonable cause and, therefore, the respondents are liable to pay interest at the rate of eighteen per cent in view of Sub-section (2) of Section 29 of the Act. The petitioner will, therefore, be entitled to interest from the date immediately after the expiry of three months from the date of the Tribunal's order till the date of the delivery of a valid voucher.

10. The Standing Counsel adverting to Rule 90 of the U.P. Trade Tax Rules (hereinafter referred to as "the Rules") submits that the interest liability cannot arise before the refund is claimed and, in this case, the petitioner made an application for claiming refund only on December 13, 1995. We see no force in the submission of the Standing Counsel. Refund becomes due u/s 29 of the Act immediately after a final order is passed and, in this case, the order of the Appellate Tribunal came to be passed on February 22, 1993. The respondent became liable to refund the amount as a result of the Tribunal's order and it is wrong to say that the liability will arise only from the date of the application made by the petitioner for refund. Even if no application is made for refund by the petitioner, the respondents are liable to refund the amount in consequence of the final order, passed by the Appellate Tribunal.

11. The petition, accordingly, succeeds and is allowed. The respondent No. 2 is directed to pay interest to the petitioner in view of the foregoing observations within one month from the date a certified copy of this order is produced before him.