(1998) 10 GAU CK 0010

In the Gauhati High Court

Case No : Civil Rule No. 426 of 1998

Biswakarma Trading Co. (M/S) APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 27-10-1998

Acts Referred:
Tripura Sales Tax Act, 1976 — Section 20

Citation : (1998) 4 GLT 252

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : Sushil Chandra Saha, for the Appellant; U.B. Saha, G.A., for the Respondent

Judgement

A.K. Patnaik, J.—In this writ application, the Petitioner has challenged the order dated 7.10.98 passed by the Assistant Commissioner of Taxes, Government of Tripura, Agartala directing the Petitioner to pay a further sum of Rs. 55,142.00 as a precondition for admission of appeal filed by the Petitioner against the imposition of penalty and tax levied for the year 1996-97.

2. Mr. Sushil Chandra Saha, learned Counsel appearing for the Petitioner, submitted that a reading of the proviso to Section 20 of the Tripura Sales Tax Act, 1976, (for short, "the 1976 Act"), would show that normally an appeal is not entertained by the appellate authority unless he is satisfied that the amount of a tax assessed or the penalty levied has been paid. But in Clause (ii) of the said proviso, it is stated that the appellate authority, for the reasons to be recorded in writing, may direct the Appellant to pay any lesser amount which shall not be less than fifty per cent of the tax assessed or fifty percent of the penalty levied and, on payment of the amount so directed, may entertain the appeal.

3. Mr. Saha pointed out that for the year 1996-97, the total amount of tax that had been assessed was Rs. 5,17,176.16 and the total amount of penalty that had been levied was Rs. 3,10,284.24, and hence the total amount of tax assessed and the penalty levied by the assessment orders and penalty orders worked out

at Rs. 8,27,420.40 and fifty percent of the aforesaid tax and the penalty worked out at Rs. 4,13,710.20. The Petitioner has already paid an amount of Rs. 3,10,280.00 as tax and Rs. 1,00,000.00 pursuant to the direction of this Court in the earlier Civil Rule totalling to Rs. 4,10,280.00. According to Mr. Saha, therefore an amount of Rs. 3,430.20 only is required to be paid by the Petitioner to complete the deposit of fifty percent of tax and penalty. Mr. Saha contended that the Assistant Commissioner of Taxes in the impugned order dated 7.10.98 while deciding that fifty percent of the tax and the penalty should be paid as deposit for admission of appeal, has calculated fifty percent of the tax and fifty percent of penalty separately and has taken the entire deposit of tax of Rs. 3,10,284.20 already made by the Petitioner towards 60% of the tax amount and has directed the Petitioner to deposit Rs. 55,142.00 towards 50% of the penalty amount after taking into account the sum of Rs. 1,00,000.00 already deposited by the Petitioner pursuant to the direction of this Court in the earlier Civil Rule.

4. Mr. U.B. Saha, learned Government Advocate, Tripura, on the other hand, sought to sustain the impugned order dated 7.10.98 passed by the Assistant Commissioner of Taxes and submitted that the Assistant Commissioner of Taxes has correctly interpreted the provisions of Section 20, proviso (i) and (ii) of the 1976 Act.

5. In the instant case, the Petitioner has filed an appeal against the assessment made by the Assessing Authority after rejection of his Books of accounts and the enhancement of tax amount was from Rs. 3,10,280.00 to Rs. 5,17,136.16. In these peculiar facts and circumstances, payment of more than 50% of the tax and the penalty as a condition for entertaining the appeal was unfair and unreasonable and the appellate authority should have insisted upon the payment of only the minimum amount of fifty percent of the tax amount as the deposit for entertaining the appeal u/s 20(i), and proviso (ii) to the said section of the 1976 Act and should have treated the balance 10% of the tax amount paid by the Petitioner as a deposit towards fifty percent of the penalty as the appeal filed by the Petitioner was both against the tax and the penalty. This is the fair and correct interpretation of the aforesaid provision read with the explanation to clause "(ii) of the proviso to Sub-section (i) of Section 20 of the 1976 Act which is extracted herein below:

Explanation: For the purpose of clause-(ii), any amount paid either as tax or as penalty shall be deemed to be the amount paid towards tax assessed or penalty levied or both.

So consured, since fifty percent of the total tax and penalty amount of Rs. 8,27,420.40 works out at Rs. 4,13,710.20 and out of the said fifty percent, Petitioner has already paid an amount of Rs. 4,10,280.00, the Assistant Commissioner of Taxes should have insisted upon the balance amount of Rs. 3,430.20 as the minimum fifty percent deposit towards tax and penalty for entertaining the appeal under clause-(ii) of the proviso to Sub-section (i) of Section 20 of the 1976 Act.

6. In the result, this writ petition is disposed of with the direction that on payment of the aforesaid amount of Rs. 3,430.20 by the Petitioner, the Assistant Commissioner of Taxes, Government of Tripura, Agartala will entertain the appeal, hear and dispose of the same on its merit. However, considering the entire facts and circumstances of the case, I leave the parties to bear their respective costs.