(1995) 11 GAU CK 0027

In the Gauhati High Court

Case No : Civil Rule No. 48 of 1989

Delta Industries APPELLANT

Vs

State of Nagaland RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Citation : (1996) 1 GLJ 510

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

Bench : Single Bench

Advocate : U.B.Saha, D.Biswas, Advocates appearing for Parties

Judgement

1. This is an application under Article 226 of the Constitution filed by the petitioner for quashing the communication dated 18th January, 1989 of the Additional Commissioner of Taxes, Govt. of Tripura to the petitioner wherein it has been stated that ''Mill Board'' is covered under the Entry 39 of the Schedule appended to the Tripura Sales Tax Act, 1976 and was taxable at the rate of 12 percent and for a declaration that Mill Board was not taxable under the Tripura Sales Tax Act, 1976 and for further direction on the respondents to refund the sum of Rs. 1,768/ realised as tax on Mill Board from the petitioner with interest on the ground that the said tax was recovered from the petitioner without jurisdiction.

2. Brief facts of the case as stated in the writ petition are that the petitioner is a Small Scale Industrial Unit registered with the District Industries Centre, Tripura (West) manufacturing file cover, file board and cotton tags. For the manufacture of file board, the petitioner imports Mill Board from outside the State. Accordingly, under a Bill dated 19.12.88 of M/s India Trading Agency, 14/2, Old China Bazar, Calcutta the petitioner purchased Mill Board of the value of Rs. 10,989/ and the said Mill Board were transported by the carrier from Calcutta to Tripura. When the Mill Board were received by the carrier at Tripura, a demand was made on the petitioner to pay the tax of said Mill Boards under the Tripura Sales Tax Act, 1976. The petitioner, however, sought clarification by letter dated

30th January, 1989 from the Additional Commissioner of Taxes, Govt. of Tripura as to whether Mill Board was taxable under the Tripura Sales Tax Act, 1976. But by the communication dated 18th January, 1989 of the Additional Commissioner of Taxes, Govt. of Tripura the petitioner was informed that Mill Board was covered by Entry 39 of the Schedule to the Tripura Sales Tax Act, 1976 and was taxable at the rate of 12 percent. Thereafter, a sum of Rs.1,768/ was deposited under c hall an dated 1.2.1989 as sales tax by the petitioner and the Mill Boards were released by the petitioner as the petitioner wanted to release the Mill Boards forthwith for the purpose of using the same in his industry for manufacturing file board.

3. At the hearing of the Civil Rule, Mr. DK Biswas, learnedcounsel for the petitioner submitted that a reading of Entry 39 of the Schedule to the Tripura Sales Tax Act, 1976 will show that Mill Board is not covered by the said Entry and so not liable for tax under the Tripura Sales Tax Act, 1976, particularly when there is no residuary entry in the Schedule. Mr. Biswas further submitted that the petitioner has to import the Mill Board from places outside the State for the purpose of manufacturing file boards in his Small Scale Industry and that the petitioner had no option but to pay an amount of Rs. 1,768/ as sales tax for the purpose of releasing the Mill Boards imported from Calcutta and utilising the same in his industry for manufacturing file board and now that the petitioner has paid the same, a direction ought to be issued for refund of the said amount illegally realised as tax.

4. Mr. UB Saha, learned Government Advocate, however, relying on the affidavitinopposition filed on behalf of the respondents submitted that Mill Board is covered under the Entry 39 of the Schedule to the Tripura Sales Tax Act, 1976 and thus taxable under the said Act. He further submitted that a reading of Rules 45 and 48 of the Tripura Sales Tax Rules, 1976 would show that a deafer who is not registered under the said Act cannot import goods from outside the State without necessary permit. Since the petitioner admittedly was not a, registered dealer under the Tripura Sales Tax Act, 1976 though a dealer as defined by section 2 (b) of the said Act, the petitioner was liable to pay tax on the Mill Boards imported by him from outside the State. Mr.Saha also relied on the provisions of Rule 37 of the Tripura Sales Tax Rules, 1976 and submitted that the petitioner was entitled to the concession only in the manner indicated in the said Rule 37 of the Rules.

5. It is difficult to accept the aforesaid submission of Mr. UB Sana, learned Govt Advocate. In the instant case the copy of the Bill dated 9.12.1988 of India Trading Agency raised on the petitioner annexed to the writ petition as Annexure 4A clearly indicates that sale of Mill Boards of the value of Rs. 10,989/ had been made by the M/s India Trading Agency, Calcutta to the petitioner. Hence, the sale of the Mill Boards was either an intra State sale within the State of West Bengal or in inter State sale made by the said dealer to the petitioner and accordingly tax on such sales was payable by M/s India Trading Agency, Calcutta either under

the Sales Tax law of the State of West Bengal or under Central Sales Tax Act, 1956. Since the sale was not made by any dealer within the State of Tripura to the petitioner such sale was not taxable under the Tripura Sales Tax Act, 1976. Regarding the submission of Mr. Saha that under Rules 45 and 48 of the Tripura Sales Tax Rules, 1976 the petitioner not being a registered dealer could not receive the consignment of Mill Board imported from outside Tripura without payment of tax, I am of the, opinion that although the petitioner could receive the goods imported from outside the State only in accordance with the said provisions of Rule 45 and 48 of the said Rules and the tax collected from the petitioner cannot be said to be in contravention of the said Rules, once it is later on found that the tax was not required to be paid at all under the Tripura Sales Tax Act, 1976 the sale not having taken place inside the State of Tripura, the retention of the amount collected from the petitioner as sales tax by the authorities under the Tripura Sales Tax Act, 1976 was illegal and the amount has to be refunded to the petitioner forthwith under section 72 of the Indian Contract Act, 1872.

6. In view of my aforesaid conclusion it is not necessary from me to decide in this writ petition the question as to whether Mill Board was within the Entry 39 of the Schedule to the Tripura Sales Tax Act, 1976.

7. In the result, this writ petition is allowed and the respondents are''directed to refund the sum of Rs. 1,768/ to the petitioner, but considering the circumstances of the case no interest need be paid by the respondents to the petitioner on the said amount. The refund of Rs. 1,768/ shall be made by the respondents within a period of two months from today.

