(2001) 12 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 11450 of 2001

Ganesh Proteins APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 27-12-2001

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 30AA

Citation : (2002) 126 STC 266

Hon'ble Judges : D.A. Mehta, J;B.C. Patel, J

Bench : Division Bench

Advocate : Manish K. Kaji and K.H. Kaji, for the Appellant; U.R. Bhatt, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—The petitioner, a proprietary concern, in this petition has challenged the provisional assessment dated August 20, 2001, passed u/s 41B of the Gujarat Sales Tax Act, 1969 and consequential orders of attachment and cancellation of registration, praying for the following reliefs :

"(a) This honourable court be pleased to issue an appropriate writ, direction or order under Article 226 of the Constitution of India quashing and setting aside :

(1) the order of provisional assessment dated August 20, 2001.

(2) the attachment orders dated September 25, 2001 and November 22, 2001.

(3) the order dated November 1, 2001 cancelling registration of the petitioner as a dealer.

(4) the order dated August 6, 2001 demanding security by way of bank guarantee for Rs. 10,00,000.

(5) the notice dated October 25, 2001 u/s 200 of the Code threatening to attach and sell all properties of the petitioner unless the petitioner pays Rs. 6,24,685

and permanently restrain the first respondent from taking any steps in consequence thereof."

2. In view of the fact that it is common ground between the parties that issues raised in this petition are concluded by decision of this Court in Special Civil Application No. 6778 of 2001 rendered on September 10, 2001 in the case of Krunal Oil Marketing Ltd. v. Sales Tax Officer [2002] 125 STC 371 it is not necessary to set out the facts and submissions of parties in detail.

3. In view of the. clear stand taken by the State Government as reproduced in the decision in the case of Krunal Oil Marketing Ltd. [2002] 125 STC 371, and as reiterated by Mr. U.R. Bhatt, learned Assistant Government Pleader appearing for the respondents in this petition, it is clear that in case the transactions are found to be genuine they will not be affected by Section 30AA and proviso thereto. In the earlier decision it is stated thus :

"8. In this view of the matter, the respondents are required to re-examine the case in light of the principles laid down by the apex Court in State of Maharashtra v. Suresh Trading Company [1998] 109 STC 439 and in light of the aforesaid statement which was recorded by this Court in Giriraj Sales Corporation v. State of Gujarat [2002] 125 STC 369. The assessment orders will have to be quashed and set aside and respondent No. 1 will have to be directed to take a fresh decision in accordance with law and particularly in light of the aforesaid principles laid down by the apex Court in State of Maharashtra v. Suresh Trading Company [1998] 109 STC 439 and in light of the stand of the State Government as recorded in Giriraj Sales Corporation v. State of Gujarat [2002] 125 STC 369 (Special Civil Application No. 2648 of 1996 decided on November 18, 1998)".

4. The petition is accordingly allowed and the provisional assessment dated August 20, 2001 is hereby quashed and set aside. As a consequence the attachment orders dated September 25, 2001 and November 22, 2001 as well as the order dated November 1, 2001 cancelling the registration of the petitioner and the order dated August 6, 2001 demanding security by way of bank guarantee for Rs. 10,00,000 in the notice dated October 25, 2001 u/s 200 of the Code to attach and sell the properties of the petitioner are also quashed and set aside with the same directions as in paragraph 8 above. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

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