(2008) 01 P&H CK 0208

In the Punjab And Haryana At Chandigarh

Kashmir South Roadways (Regd.) APPELLANT

Vs

Excise and Taxation Commissioner and Others RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 14B, 20

Citation : (2008) 14 VST 320

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioner, who is carrying on transport business, has filed this petition under article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to refund a sum of Rs. 80,000 which was charged from him as penalty u/s 14B of the Punjab General Sales Tax Act, 1948 (for short, "the Act") and which was deposited by him on August 30, 2001 vide annexure P1.

2. It is the case of the petitioner that in high handedness Sh. S. P. Kansal, Assistant Excise and Taxation Commissioner, U.T. Chandigarh, intercepted the truck of the petitioner at barrier on August 24, 2001 which was carrying the goods of the traders, and a penalty of Rs. 80,000 was illegally imposed for carrying those consignment, without the proper documents. Because the petitioner was to get his truck released, he deposited amount of Rs. 80,000 on August 30, 2001 under the compelling circumstances, as the vehicle remained detained continuously for six days. Subsequently, the petitioner requested to the Assistant Excise and Taxation Commissioner, vide application dated October 10, 2001 for supplying the copy of the penalty order. Admittedly, the said order was not supplied to the petitioner. In absence of the penalty order, the petitioner challenged the illegal and arbitrary action of the Assistant Excise and Taxation Commissioner, U.T., Chandigarh u/s 20 of the said Act before the Deputy Excise

and Taxation Commissioner, U.T. Chandigarh. The appeal filed by the petitioner was finally heard and on June 2, 2002 the Appellate Authority allowed the said appeal and the penalty order was set aside and the case was remanded to the Assistant Excise and Taxation Commissioner, U.T. Chandigarh for passing a fresh order in accordance with law after providing opportunity of hearing to the petitioner. Undisputedly the said order passed by the Appellate Authority has also not been supplied to the petitioner till date nor the amount of Rs. 80,000 was refunded to him which was illegally and arbitrarily collected and retained even after setting aside the penalty order.

3. After remission of the case, the petitioner made several representations but till date no fresh order has been passed regarding the penalty. The amount of Rs. 80,000 has also not been refunded to the petitioner.

4. Counsel for the respondents has filed a short reply admitting that a penalty of Rs. 80,000 was imposed by the then Assistant Excise and Taxation Commissioner which was got deposited by the petitioner with the department and that said amount is still lying deposited. It has been further stated that neither the file of the Appellate Authority nor the Assistant Excise and Taxation Commissioner are available with the department. It has been stated that when the case was remanded and, the file which was received from the office of the Deputy Excise and Taxation Commissioner, U.T. Chandigarh was not returned. But it has not been satisfactorily explained why the file of the Appellate Authority is not available in the office of the Appellate Authority.

It is an undisputed position that till date copies of appellate order as well as order passed by the Assistant Excise and Taxation Commissioner have not been supplied to the petitioner nor after the remand any fresh order has been passed.

5. Counsel for the respondent states that in absence of the file of the Assessing Authority as well as the Appellate Authority the department is not in a position to pass a fresh penalty order. We are of the opinion that in case the department is not in a position to pass a fresh penalty order because of the negligence of their office or their officers, the petitioner should not suffer. In case, the department is not in a position to pass a fresh penalty order then they are not entitled to retain the amount of Rs. 80,000 which was deposited by the petitioner in the year 2001. In view of the above facts, the petition is allowed and the respondent-authority is hereby directed to immediately release the amount of Rs. 80,000 to the petitioner with interest in accordance with law forthwith.