(2005) 09 AHC CK 0247

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 678 of 2001

Nima Soaps and Detergents APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 15A(1)

Citation : (2005) 09 AHC CK 0247

Hon'ble Judges : Rajes Kumar, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Ashok Kumar, for the Appellant; S.P. Kesarwani and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the present writ petition, petitioner seeks the following reliefs:

"i. issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 4.12.2000 passed by the respondent no. 1 (Annexure No. 3);

ii. issue a writ, order or direction in the nature of Mandamus directing the respondents to make payment of interest @ 18% per annum to the petitioner due to the petitioner on the principal amount of security of Rs. 1,02,500/- within time stipulated by this Hon''ble Court;

iii. issue such other and further writ, order or direction which this Hon''ble Court may deem fit and proper in the nature and circumstances of the present case; and

iv. award costs of the petition to the petitioner."

2. Briefly stated the facts giving rise to the present petition are as follows:

Petitioner is a registered dealer, both under the U.P. Trade Tax Act and Central Sales Tax Act and is carrying on the business of manufacturing and sales of soap. It is claimed that the petitioner purchased some raw material from M/s Reliance Industries Limited, Maharashtra against requisite documents. While the goods were in transit, same were intercepted and seized by the check post officer, Trade Tax department, Fatehpuri Sikri, Agra and the security at Rs. 1,02,500/- was demanded. The security was deposited and the good was released. It appears that the security was deposited by M/s Shruti Traders, Agra alleged to be the dealer, who was looking after the matter of the petitioner. The receipt of the deposit was also issued in the name of M/s Shruti Traders, Agra. In pursuance of the seizure of the goods proceedings u/s 15-A (1)(o) of the U.P. Trade Tax Act (hereinafter referred to as "Act") was initiated against the petitioner. Assistant Commissioner (Assessment), Trade Tax, Kanpur vide order dated 31.12.1993 dropped the proceeding but observed that the amount of security could not be returned to the petitioner, in as much as it was deposited by M/s Shruti Traders, Agra. It appears that the petitioner filed applications and representation for the refund of the amount and when no action has been taken, Writ Petition No. 473 of 1998 was filed by the petitioner seeking directions to refund the petitioner''s money with interest. Division Bench of this Court on 07.04.1999 held that since the respondents have now agreed to refund the amount lying with them to the petitioner, petitioner shall make representation to the authorities concerned, particularly to the respondent no. 1 regarding other contentions including payment of interest Respondent shall decide the same within a period of four weeks, if the representation is made. With these observations, the writ petition is disposed of.

3. It appears that the a refund voucher No. 038458 for Rs. 1,02,500/- was prepared on 13.08.1999, in pursuance of Misc. order dated 13.08.1999 passed by Assistant Commissioner (Assessment) 14 Trade Tax, Kanpur. The refund voucher is alleged to have been handed over on 23.12.1999, which was deposited in the bank. On 27.12.1999 the bank has not made the payment with the remark that drawer has stopped the payment. The said amount has been subsequently adjusted with the amount of tax due in the month of January, 2000. Petitioner made a claim of interest and for which made a representation before Commissioner of Trade Tax. When the representation could not be decided, petitioner filed Writ Petition No. 601 of 2000. The aforesaid writ petition was disposed of on 24.07.2000 by the following order:

"The petitioner has prayed for interest on certain amount of security. This writ petition is disposed of with the direction to the authority concerned to decide the petitioner''s representation (copy of which is annexure-2) and any other representation which petitioner may make afresh preferably within two months from the date of production of a certified copy of this order in accordance with law by a speaking order."

4. The Commissioner of Trade Tax decided the representation by order dated

04.12.2000 and rejected the claim of refund, against which present writ petition has been filed.

5. Heard Sri Ashok Kumar, learned counsel for the petitioner and Sri S.P. Kesarwani, learned Standing Counsel.

6. Learned counsel for the petitioner submitted that petitioner is entitled for the interest from 31.12.1993, the date on which the assessing authority has passed the order dropping the penalty proceedings. According to him the refund arises from the said order. He further submitted that the refund voucher was prepared on 13.08.1999 but was handed over to the petitioner on 23.12.1999, which too was not encashed due to the insfructions to the bank not to make the payment. The said amount was subsequently adjusted with the amount of tax due in the month of January, 2000. He submitted that the petitioner is also entitled for the interest from 13.08.1999 to January, 2000, in as much as the delay in making the refund/adjustment was on the part of the assessing authority. Learned Standing Counsel submitted that in the order dated 31.12.1993 the assessing authority stated that the money has been deposited by M/s Shruti Traders, Agra thus petitioner was not entitled for the refund. Therefore, the refund was not due from the order dated 31.12.1993. He submitted that it is only on the basis of order dated 07.04.1999 passed by this Court in Writ Petition No. 473 of 1998 a Misc. order dated 13.08.1999 was passed by the Assistant Commissioner (Assessment) 14 Trade Tax Kanpur in which assessing authority decided to refund the amount to the petitioner and accordingly, refund voucher was prepared on 13.08.1999. He submitted that vide letter dated 19.08.1999 it has been informed to the petitioner that the refund voucher is ready and could be collected on any working day. The said letter was received by one Sri Ashok, the representative of the petitioner on 19.08.1999. Thereafter, further letter was issued on 21.09.1992 asking the petitioner to collect the refund voucher. This letter was received by the authorised representative of the petitioner on 22.09.1999. Further a letter has been written on 30.11.1999 asking the petitioner to collect the refund voucher. The said letter was received by Ashok Chaudhary, representative of the petitioner on 30.11.1999 and thereafter, refund voucher was finally received by the petitioner on 23.12.1999. He submitted that according to Rule 99 validity of refund voucher was only for the period of 60 days from the date of issue, which had expired on 12.10.1999 and therefore, the petitioner should not have accepted the refund voucher on 23.12.1999, as per his own claim, the same had already become invalid. He submitted that if the petitioner has presented the refund voucher the validity of which had already been expired on 12.10.1999, respondent can not be held responsible for its non-encashment. He further submitted that after the return of the refund voucher petitioner wrote a letter 01.02.2000 for the adjustment of the amount of Rs. 1,02,000/- with the amount of tax due for the month of February and returned the refund voucher. On the request of the petitioner, amount has been adjusted in the month of February, 2000 in accordance to the law within a reasonable period and therefore petitioner is not entitled for the refund of the interest on

any amount.

7. We have given our anxious consideration to the submissions of the learned counsel for the parties. In the order dated 31.12.1993 assessing authority denied the refund to the petitioner on the ground that the amount was deposited by M/s Shruti Traders, Agra, therefore, it can not be said that the refund arose from the order dated 31.12.1993. Perusal of the order dated 13.08.1999 passed by Assistant Commissioner (Assessment) Trade Tax, Kanpur shows that the refund has been allowed to the petitioner on the basis of the order dated 07.04.1999 passed by this Court in Writ Petition No. 473 of 1998 and accordingly refund voucher dated 13.08.1999 was prepared. Thus the claim of the petitioner for the interest from 31.12.1993 is rejected. Record have been produced before us. On the direction of the Court, photocopies of the correspondence have been provided by learned Shtanding Counsel. Perusal of the paper shows that the assessing authority vide letter dated 19.08.1999 informed the petitioner that the refund voucher is ready and may be collected on any working day. The said letter was received by the representative of the petitioner on 19.08.1999. Thereafter, another letter was issued on 21.09.1999 asking the petitioner to receive the refund voucher. The said letter was received by the authorised representative of the petitioner on 22.09.1999. Further letter has been issued by the assessing authority on 30.11.1999 asking the petitioner to collect the refund voucher. The said letter was received by Ashok Chaudhary, representative of the petitioner on 30.11.1999. It appears that refund voucher has been finally received by the petitioner on 23.12.1999 as claimed by the petitioner, which has been returned without encashment with the remark "Payment stopped by the drawer." Thereafter, the petitioner wrote a letter dated 01.02.2000 requesting the assessing authority to adjust the amount of Rs. 1,02,000/-with the amount of tax due for the month of February, 2000 and accordingly, adjustment was made. The aforesaid fact shows that there was no latches on the part of the assessing authority. Delay in receiving the refund voucher was on the part of the petitioner In view of Rule 99 refund voucher was valid only for 60 days, i.e. upto 12.10.1999. The presentation of the refund voucher dated 13.08.1999 after expiry of 60 days was petitioner''s own mistake and for which assessing authority can not be held responsible. Immediately when the refund voucher was returned by the bank and the petitioner wrote the letter dated 01.02.2000 to the assessing authority for the adjustment of amount, the amount was adjusted with the amount of tax due in the month of February, 2000. Therefore, there was no delay on the part of the assessing authority in making the adjustment. In the circumstances, petitioner is not entitled for any interest and the claim of the petitioner in this regard is accordingly, rejected.

8. In the result, writ petition is dismissed. There shall be no order as to costs.

