(2011) 12 AHC CK 0411

In the Allahabad High Court

Case No : Writ Tax No. 963 of 2007

Rajendra Pratap Singh and Company — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 15(1)(c), 29(2)

Citation : (2013) 57 VST 445

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : Aloke Kumar and K. Saxena, for the Appellant; U.K. Pandey, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Rejoinder affidavit filed today be taken on record. By means of the present writ petition the petitioner seeks a writ, order or direction in the nature of mandamus commanding the Deputy Commissioner (Assessment) IV, Trade Tax, Allahabad, respondent No. 3, to refund Rs. 24,54,650 to the petitioner along with interest. The petitioner has further sought a writ of certiorari quashing the penalty order dated June 6, 2007 passed by the said respondent u/s 15A(1)(c) of the U.P. Trade Tax Act 1948, hereinafter referred to as "the Act", filed as annexure No. 14 to the writ petition.

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

The petitioner is a partnership firm registered under the provisions of the Act and deals in purchase and sale of tendu leaves, stone and stone plates, i.e., patiya and patthar. These goods were imported from outside the State of U.P. against the declaration form XXXI. The Commissioner, Trade Tax, U.P., Lucknow, respondent No. 2, had issued a circular u/s 8C(3A) of the Act by which it was made, obligatory on the part of dealers to deposit certain amount as security-advance tax for obtaining form XXXI for importing goods from outside the State of U.P. During the assessment year 2000-01, the petitioner had deposited a sum of Rs. 17,26,915 with respondent No. 3 for importing all these goods. This security was to be adjusted towards the tax payable at the time of final assessment. The assessment took place and a best judgment assessment was made determining the taxable turnover at Rs. 3,66,00,000 and a sum of Rs. 30,56,000 was imposed as tax. The matter was taken up in appeal and ultimately the Trade Tax Tribunal, Bench II, Allahabad vide order dated 22nd June, 2005 had fixed the tax liability of the petitioner at Rs. 22,56,000. The petitioner in all had deposited a sum of Rs. 60,45,965. This amount is inclusive of the security deposit of Rs. 17,26,915. The final tax was determined by the Tribunal at Rs. 22,56,000. After adjusting the refund already taken, the petitioner claimed refund of Rs. 24,54,650. When the refund was not being granted the petitioner approached this court by means of the present writ petition. During the pendency of the writ petition, respondent No. 3 refunded a sum of Rs. 7,20,000 and a sum of Rs. 17,33,550 had remained outstanding. Vide order dated May 27, 2010 passed by this court, the court directed the respondents to refund the amount within two months or to show cause and also to show cause as to why the interest should not be awarded to the petitioner for the delayed payment. The order dated May 27, 2010 is reproduced below:

By means of the present writ petition the petitioner is claiming the refund of Rs. 24,54,650, It appears that out of the aforesaid amount an amount of Rs. 7,20,000 had already been paid after the decision of the Tribunal and a sum of Rs. 17,33,550 is outstanding. The contention of the petitioner is that the aforesaid amount has been deposited at the check-post as a security and in absence of any dues against the petitioner the same is liable to be refunded. In support of the claim that the amount has been deposited towards security, the certificate of the check post officers has been filed along with the writ petition. In the counter-affidavit it is stated that the amount could not be refunded as the verification has not been made from the check-post. We are not satisfied with the reasoning given by the respondent in not granting the refund. The amount appears to have been deposited in 2000 and the certificate is of 2007. It is surprising that though sufficient time has been passed but the verification has not been made. It appears to be on account of negligence or lapses on the part of the authority concerned.

As a last opportunity, we allow two months? time to the assessing authority to verify the certificate and to refund the amount to the petitioner or to show cause. The assessing authority is further directed to show cause why the interest should not be awarded to the petitioner for the delayed payment.

List in the week commencing August 23, 2010.

3. After the order dated May 27, 2010 was passed, the respondents have refunded a sum of Rs. 16,97,660 vide voucher No. 11 dated August 4, 2010. However, on the question of payment of interest no decision has been taken. In the second supplementary affidavit filed by Dr. Mukesh, Deputy Commissioner,

Commercial Tax, Sector 5, Allahabad, a stand has been taken on the question as to whether the amount deposited at the check-post by the dealers on importing the goods without form XXXI would amount to deposit towards the compounding money liable to be adjusted towards penalty or as security deposited against import of goods without form XXXI is still sub judice and as such the petitioner is not entitled for payment of interest on the amount refunded to it so long as the controversy is not finally decided by this court.

4. We have heard Sri Kunwar Saxena, learned counsel for the petitioner and Sri U.K. Pandey, learned standing counsel for the respondents.

5. Sri Saxena has confined his submissions relating to the claim of interest on the delayed payment of refund and not on the question of penalty order u/s 15(1)(c) of the Act for which he submits that he shall pursue the statutory remedy.

6. Sri Saxena, learned counsel for the petitioner, submitted that as the entire amount deposited by the petitioner towards security has been refunded, the plea that the amount of security deposited was towards compounding money is not correct. According to him, the amount of security deposited by the petitioner was for obtaining declaration form XXXI in terms of the circular issued by the Commissioner, Trade Tax, U.P., Lucknow in exercise of his power u/s 8C(3A) of the Act and, therefore, by no stretch of imagination the security deposited can be treated towards compounding money. The amount deposited for issuance of form XXXI though termed as security was, in fact, in the nature of advance tax, which was to be adjusted at the time of final assessment and that exactly had been done by the assessing authority. According to him, there is no justification for denying the payment of interest on delayed refund and, therefore, the petitioner is entitled for payment of interest on delayed refund u/s 29(2) of the Act.

7. Sri Pandey on the other hand relied on the averments made in paragraph 4 of the second supplementary counter-affidavit justifying the State''s action in not paying the interest.

8. We have given our thoughtful consideration to the various plea raised by the learned counsel for the parties and find that the amount which the petitioner had deposited as security was not the amount towards compounding but was for obtaining declaration form XXXI in terms of the circular issued by respondent No. 2 u/s 8C(3A) of the Act. This amount of security was to be adjusted at the time of final assessment which, in fact, has been done by the assessing authority. That being the position, the Department cannot take shelter under the plea that amount of security represented the amount deposited towards compounding. The Department is liable to pay the interest u/s 29(2) of the Act on the delayed payment of refund of the excess amount. We, therefore, allow the writ petition and direct the respondent No. 3 to calculate the interest payable on the delayed payment of refund of excess tax deposited by the petitioner in terms of section 29(2) of the Act and make payment of the same within one month from the date a certified copy of this order is filed before the said authority. The writ petition

succeeds and is allowed in part.