(1977) 09 AHC CK 0038

In the Allahabad High Court

Case No : C.A. No. 661 of 1970

RAM DAS RAM PARKASH — APPELLANT

Vs

NAGAR MAHAPALIKA and Another — RESPONDENT

Date of Decision : 22-09-1977

Acts Referred:

Citation : (1977) 6 CTR 257

Hon'ble Judges : Yashodanandan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Yashodanandan, J. - The appellants writ petition was allowed by a learned single was allowed by a learned single Judge in part. Aggrieved by the dismissal of its petition in part the appellate has filed this appeal. The facts giving rise to this appeal are that by a notification dated 16th January 1960 the Nagar Mahapalika, Kanpur proposed to revise the rates of terminal tax on various commodities imported within or exported from the municipal limits. The petitioner filed a writ petition some time in the year 1969 challenging the legality of this notification enhancing the rates of terminal tax and imposing the tax on certain additional commodities. It prayed for the quashing of the notification and further prayed for an order or writ directing the respondent Nagar Mahapalika to refund the excess tax realised on the basis of the impugned notification. The learned signal Judge following an earlier decision of this court in writ petition No. 1200 of 1960 M/s. J. K. Jute Company Ltd. Kanpur vs. Nagar Mahapalika Kanpur decided on 15th December 1967, by a judgment dated 15th July 1970 partly allowed the writ petition and quashed the notification impugned and directed the respondent Nagar Mahapalika not to enforce it in so far as it enhanced the rates of duty and introduced new items of taxes. The second prayer made by the appellant claiming for refund of the taxes realised under the impugned notification for the period commencing 16th January 1960 was refused by the learned single Judge. The learned single Judge took the view that the claim for refund of taxes should normally be made in a civil suit and the claim would be maintainable only if made within the period of limitation prescribed under the Indian Limitation Act. In the instant case there was no averment as to when the petitioner had become aware of the illegality of the notification under which the taxes were collected from the appellant. The learned single Judge consequently held that it was difficult to say that the appellant had established that it had come to this court within the period prescribed by the Limitation Act for a suit for refund. Under the circumstances the learned single Judge declined to entertain the plea of the appellant that the respondent Nagar Mahapalika should be directed to refund the taxes illegally collected from 16th January 1960. He, however was of the view that the petitioner was entitled to claim refund of the taxes for the period during which the writ petition remained pending in this court and ordered accordingly. The view taken by the learned single Judge is, in our opinion, perfectly sound and no exception can be taken to it. The claim for refund was in substance one for a money decree and unless the appellant shows that its claims was within the period of limitation prescribed by law it would not be proper to exercise the discretion to grant relief in this respect.

2. The special appeal is without any merit and is hereby dismissed. Parties shall bear own costs.

