(1995) 01 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 8956 of 1990

Ram Swarup APPELLANT

Vs

Assistant Sugar Commissioner,Bareilly and Another RESPONDENT

Date of Decision : 10-01-1995

Acts Referred:

Citation : (1995) 01 AHC CK 0052

Hon'ble Judges : K.L.Sharma, J

Final Decision : Disposed Of

Judgement

K. L. Sharma, J.—This is a writ petition under Article 226 of the Constitution of India directed against the order dated 451994 passed by respondent No 2. Assessing Authority and the orders dated 12101994 and 23111994 paised by the respondent No,] as the appellate authority

Scan page No. 554

He has prayed for a writ of certiorari quashing these orders and also for a writ of mandamus directing the respondents not to realize the Sugar Cane Purchase Tax from the petitioner

2. I have heard learned counsel for the petitioner Sri H. C. Rastogi and the learned Standing Counsel for the respondents and perused the material brought on record.

3. The petitioner has been assessed Cane Purchase Tax on the basis of the inspecting note by Sugar Cane Inspector. In the month of January, 1994 the petitioner was running a power Kolhu for making GUR for his use own use. He has been assessed Cane Purchase Tax on the ground that he purchased sugar cane without paying the tax. The impugned orders shows that the son of the petitioner who was present at the Kolhu site at the time of the inspection by the Sugar Cane Inspector, said that the sugar cane belonged to him and he asked for time to show evidence to prove that the sugar cane was not purchased from any

body else and it had been grown by themselves. He could not however produce on evidence and the assessing authority passed the ex pane order. Thereafter the petitioner filed an appeal before the respondent No. 1 and moved an application for condonation of delay in filing of the appeal that he remained ill and tiled a medical certificate. The appellate authority held that the delay was not fully explained and held that the appeal is barred by limitation. Consequently he dismissed the appeal. The petitioner was not informed and was not given an opportunity of hearing to explain the delay personally. He however moved an application again before the appellate authority for granting an opportunity of hearing. The appellate. authority informed him that his appeal has already been dismissed as time barred on 12101994. Thereupon the petitioner moved this petition.

4. Learned counsel for the petitioner has submitted that the question whether the petitioner was liable to pay cane purchase Tax, was a substantial one, which was necessary to be decided by the Assessing Authority, as the petitioner''s son who was present at the Kolhu at the time of the inspection claimed the sugarcane as their own and denied the purchase of the sugar cane from any other person. Learned counsel for the petitioner has further submittted that the petitioner could not produce the evidence as he fell ill. It was necessary that further time should have been granted to him. He could not seek himself further time because he fell ill that was the reason for delay in contesting the proceedings before the Assessing Authority as well as in filing the appeal before the Appellate Authority. He therefore pressed hard for an opportunity of hearing on the substaatial question in the interest of justice which may not be denied to him on account of his default due to illness. However, I consider proper that in the interest of justice an opportunity should be given to the petitioner who emphatically denied that sugar cane was purchased and therefore no sugarcane purchase tax was liable against him. He is an agriculturist arid was running a Kolhu for making GUR for his own use from the sugarcane grown by him in his field. Therefore it is considered necessary to quash the orders aud direct the Assessing Authority respondent No. 2 give an opportunity to the petitioner to adduce evidence to prove that he had not purchased the sugarcane from any other person and that was grown in his own field which he was using in his Kolhu. Accordingly this writ petition is hereby allowed and the impugned orders are hereby quashed any the Assessing Authority respondent No. 2 is directed to give an opportunity to the petitioner to prove the ownership of the sugarcane and thereafter to record a fresh decision on the question of the liability of tax, if any, payable by the petitioner. However the petitioner is also directed to cooperae with the Assessing Authority and produce all his evidence before him by appearing on or before 3111995 and if he is unable to do so for any reason, he is directed to make an application for necessary permission of the Assessing Authority respondent No. 2 and cooperate with him for the expeditious disposal of the proceedings.