(2003) 04 GAU CK 0001

In the Gauhati High Court

Case No : Writ Petition (C) No. 1621 of 2000

Ramesh Kumar Agarwal APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:
Assam General Sales Tax Act, 1993 — Section 22, 25(3)

Citation : (2003) 132 STC 214

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : S.K. Kejriwal and S. Kejriwal, for the Appellant; N. Islam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—Heard Mrs. S. Kejriwal, learned counsel for the petitioner and Mr. N. Islam, learned Government Advocate, Assam.

2. For the assessment periods ending March 30, 1991, March 31, 1992, September 30, 1992 and March 31, 1993, demand notices were issued to the writ petitioner requiring him to pay on or before September 5, 1994 a total sum of Rs. 4,28,688 being the amount of tax and interest for the period ending as aforesaid. The petitioner not having paid the aforesaid amount, a Bakijai proceeding was instituted. Thereafter, it appears that the petitioner requested the authority to allow payment of tax and interest, as demanded, in instalments and the same was allowed and the petitioner was directed to effect payment in monthly instalments at the rate of Rs. 20,000. The petitioner cleared the dues by making payment in instalments and a certificate that the petitioner had paid the entire dues involved in Bakijai case in question was issued by the Superintendent of Taxes (Recovery), Dibrugarh, dated August 10, 1999. It may be noticed herein that it is the petitioner''s case that not only the entire amount due has been tendered in instalments but a sum of approximately Rs. 44,000 has been overpaid by him.

3. Ordinarily, the matter should have rested at that but a notice dated August 8, 1999 was issued by the Superintendent of Taxes asking the petitioner to pay a further amount of Rs. 1,26,872 being the interest imposed on account of failure of the petitioner to pay the dues within the time mentioned in the demand notices. Aggrieved, the instant writ application has been filed wherein by order dated April 5, 2000, this Court directed to pay 50 per cent of the additional amount demanded by the notice dated August 8, 1999.

4. u/s 25(3) of the Assam General Sales Tax Act, 1993, the assessing officer or the competent authority is empowered to extend the time for payment of tax and also allow payment by instalments. It is in exercise of the aforesaid power that the Superintendent of Taxes (Recovery) had allowed the petitioner to deposit the dues in instalments. The exercise of the statutory power for payment in instalments would naturally have the effect of altering the date of payment mentioned in the initial demand notices and such altered dates must be understood with reference to the last date of payment by instalment. As the petitioner had admittedly cleared the entire dues by payment in instalments as allowed by the order of the jurisdictional Superintendent of Taxes, no default can be attributed to the writ petitioner in the matter of payment of the dues as mentioned in the demand notices in question. Section 22 of the Act under which the interest appears to have been imposed by the notice dated August 8, 1999, therefore, would have no application to the present case and the demand for interest as raised, does not appear to be legal and valid. Consequently, the notices dated August 8, 1999, January 4, 2000 and January 7, 2000 impugned in the present writ application shall stand set aside and quashed and the amount paid by the petitioner pursuant to the interim order, is directed to be returned by the authority to the writ petitioner within 30 (thirty) days from the date of receipt of this order.

5. The writ petition stands allowed as indicated above.

