(2000) 08 P&H CK 0131

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 276 of 2000

Rathi Bhatta Company and Others APPELLANT

Vs

State of Haryana and Another RESPONDENT

Date of Decision : 09-08-2000

Acts Referred:
Haryana General Sales Tax Rules, 1975 — Rule 39A

Citation : (2004) 134 STC 51

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Kulvir Narwal, for the Appellant; Jaswant Singh, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.

1.The petitioners, have challenged the vires of notification dated March 31, 1999 by which rule 39A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules") has been amended so as to make the brick kiln owners liable to pay lump sum tax with effect from October 1, 1998.

2. Learned counsel for the petitioners invited our attention to the order dated December 11, 1996 passed in C.W.P. No. 11994 of 1996 Ranbir Singh Ram Gopal Vs. State of Haryana and Another, and submitted that in view of the decision of the division Bench, which has become final, the impugned notification should be struck down to the extent of retrospectivity.

3. The learned Deputy Advocate General fairly conceded that in view of the judgment of Ranbir Singh Ram Gopal Vs. State of Haryana and Another, , he is not in a position to defend the retrospective amendment in the rate of the lump sum tax payable by the brick kiln owners.

4. In view of the above, we allow the writ petition and quash the impugned

notification to the extent it makes the brick kiln owners liable to pay higher rate of lump sum tax with retrospective effect. We also direct that the respondents shall not initiate, proceedings for recovery of lump sum tax at the enhanced rates from the petitioners for the period between October 1, 1998 and March 31, 1999. If the proceedings for recovery of the lump sum tax have already been initiated on the basis of the impugned notification and order has already been passed by the concerned authority, then the same shall not be implemented. It is, however, made clear that the petitioners shall be liable to pay tax at the old rates for the aforesaid period and the concerned authority shall be entitled to recover the same in accordance with law.

5. We also hope that this order will be given effect to qua other similarly situated persons so that necessity of filing of similar petitions is obviated.