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(1999) 08 GAU CK 0028

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2884 of 1999

Surya Prakash Maheswari APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 22, 22

Citation : (2000) 1 GLJ 98

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : T.C.Chutia, A.K.Maheswari, Advocates appearing for Parties

Judgement

1. Heard Mr. AK Maheswari, learned counsel for the petitioner and Mr. TC Chutia, learned Junior Govt Advocate.

2. The petitioner is a dealer carrying on the business inter alia of purchasing and selling jute materials, for the period ending 31.12.92, the petitioner submitted his return of tax under the Assam Purchase Tax Act, 1967 and an assessment was made by the concerned Superintendent of Taxes under section 8 (3) of the said Act on 23.2.93 and in the said assessment it was stated that a sum of Rs. 54,400 had been paid by the petitioner in excess and was refundable to the petitioner. Thereafter the petitioner submitted his return for the period ending 31.3.93 under the aforesaid Act showing therein that he had paid excess amount of Rs. 55,300.

3. Petitioner''s case is that the aforesaid excess amounts were collected by the Department on account of levy of purchase taxes in advance at the Check Gates when the goods were transported by the petitioner out side of Assam. The petitioner however moved this Court in a writ petition under Article 226 of the Constitution and the same was registered as Civil Rule No. 1343 of 1993 and by judgment and order dated 28th June''93 the learned Single Judge of this Court while directing the respondents not to realise tax in advance on the basis of per

truck load of goods purchased by the petitioner, further directed the respondents either to refund the excess amount of taxes so realised or to allow the petitioner to adjust the amount against the taxes payable by the petitioner in future. The grievance of the petitioner is that notwithstanding the direction of the learned Single Judge in the said judgment dated 28th June ''93 in Civil Rule No. 1343 of 1993 (1996 (2) GLJ 433) to refund the excess amount, of tax or to adjust the excess amount against tax payable by the petitioner in future, the respondents did not either refund the amount or adjust the amount of tax payable by the petitioner.

4. Mr. AK Maheswari learned counsel for the petitioner submitted that, in the meantime the petitioner has already closed down his business, but he had received an assessment order for the period 199394 demanding tax as on 31.3.94 amounting to Rs. 1,05,600/ and interest thereon. According to Mr. AK Maheswari since an amount of Rs. 1,09,700/ (54,400+55,300) has already been paid in excess for the period ending 31.12.92 and 31.3.93 respectively the respondents ought to have adjusted the aforesaid demand of tax of Rs. 1,05,600/ paid against the aforesaid excess amount of Rs, 1,09,700/ and paid the balance amount.

5. Mr. TC Chutia, learned Junior Govt Advocate, however, submitted that since after the judgment passed by this Court on 28th June ''93,no application was filed by the petitioner either for refund or for adjustment of the aforesaid excess amount paid by the petitioner, the respondents have not refunded the amount or adjusted the amount. He therefore submitted that in case the petitioner submitted in application for refund or adjustment, the same shall be disposed of by the respondents keeping in mind the direction of this Court in the said Civil Rule No. 1343 of 1993.

6. Mr. AK Maheswari, learned counsel for the petitioner, on the other hand,

contended that before the judgment was delivered on 28th June, 1993, the petitioner had submitted an application dated 5.5.93 before the Commissioner of Taxes, Assam either to refund the aforesaid excess amount or to adjust the same, but no orders have been passed by the Commissioner of Taxes.

7. It appears from the copy of the judgment dated 28th June, 1993 passed in Civil Rule No. 1343 of 1993 which has been annexed to this petition as Annexure 4 that a direction was given to the respondents either to refund the amount of tax realised from the petitioner or to allow the petitioner to adjust the amount against the tax payable by the petitioner in future. It further appears that a demand of tax for the period 199394 ending on 1.4.94 amounting to Rs. 1,05,600/ has been raised against the petitioner. Since the petitioner has prayed in this writ petition, that the amount of Rs. 54,400/ paid in excess for the period ending 31.12.92 and the amount of Rs. 55,300/ paid in excess for the period ending 31.3.93 should be adjusted against the demand of tax of Rs. 1,05,600/ for the period ending 31.3.94, I direct that the aforesaid excess amounts of Rs.

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54,400/ and Rs. 55,300/ totalling to Rs. 1,09,700/ will be adjusted against the said demand of tax of Rs. 1,05,600. Further, since the aforesaid amounts of Rs. 54,400/ and Rs. 55,300/ were paid during the period ending on 31.12.92 and 31.3.93 which were prior to the period 199394 for which the demand of tax of Rs. 1,05,600/ was made, no interest would be payable on the demand of Rs. 1,05,600/. Further, after the adjustment of tax of Rs. 1,05,600/ the petitioner will be refunded with the excess amount, if no other due is payable by the petitioner. The aforesaid direction will be complied d with within a period of one month from the date of receipt of the certified copy of this order by the Superintendent of Taxes, Mangaldoi. No costs.

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