Gupta GraIn Stores Vs. Cit

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SooperKanoon Citation : sooperkanoon.com/140358

Court : Patna

Decided On : Jan-08-2003

Appeal No. : C.W.J.C. No. 11706 of 2002 8 January 2003

Appellant : Gupta GraIn Stores

Respondent : Cit

Judgement :

The petitioner has filed the present writ application for a direction to refund the amount of tax paid for settlement of tax in arrear under the provisions of Kar Vivad Samadhan Scheme, 1998 (hereinafter referred to as 'the Scheme').

2. The facts, which are not in dispute, are that in terms of the aforesaid scheme, the petitioner made a declaration, on the basis of which a certificate was granted under the said scheme to the petitioner. Later on, it was found that the certificate was obtained by making false statement and, accordingly, certificate granted was cancelled and the pending proceeding was revised in terms of proviso (1) to section 90 of the Scheme.

3. According to the petitioner, once declaration has been found to be false under the Scheme and the proceeding has been revived in terms of the said proviso, it will be treated that no declaration has been made and as such the petitioner is entitled to refund of the amount under the aforesaid scheme.

4. Learned counsel appearing for the respondents, on the other hand, submitted that once in terms of section 93, any amount is paid in pursuance of the declaration made under section 88, the same is not to be refunded in any circumstance, which includes cancellation of the certificate also.

5. We are of the view that this question is no longer res integra by virtue of it having been settled by the Supreme Court in the case of Union of India v. Onkar S. Kanwar : 2002ECR275(SC) wherein it has been held that once amount has been paid the same will not be refunded under any circumstance. In that case, the amount under the Scheme was deposited under protest even then it was held that in view of the aforesaid provisions of the scheme, the amount is not refundable. The fact that the proceeding is revived after declaration having been found to be false does not mean that the deposit will be treated to be no deposit under the provisions of the Scheme and once the deposit had been made under the provisions of the Scheme in terms of section 93, the same is not refundable as the Scheme itself says that amount deposited cannot be refunded in case of happening of any event.

6. In the result, we find no merit in this writ application and it is, accordingly, dismissed.