

Emmanuel Vs. Union of India

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Court : Kerala

Decided On : Sep-15-1998

Reported in : [2000]107TAXMAN427(Ker)

Appeal No. : O.P. No. 17756 of 1998 15 September 1998

Appellant : Emmanuel

Respondent : Union of India

Advocate for Pet/Ap. : N.J. Mathews, *for the Assessee* P.K. Ravindranatha Menon and N.R.K. Nair, *for the Revenue*

Judgement :

Petitioner seeks to quash Exts. P4 and P6 orders and for a direction to refund to the petitioner the excess amount of tax collected from him on the basis of Ext. P4. The Commissioner refused to interfere with the assessment order on the following grounds :

- ' 1. The applicant did not file an appeal against the assessment order dated 20-3-1996.
2. The applicant came across the order of the Commissioner (Appeals) referred to above only on or about 27/28-2-1998 when he found that the payment towards building fund of the Cochin Stock Exchange Ltd. has been allowed as a revenue expenditure.'

The Commissioner also found that the decision of the Commissioner (Appeals) in similar cases has not been accepted by the department. That apart, in my view, the matter is squarely covered by the Constitution Bench judgment of the Supreme Court in *Mafatlal Industries Ltd. v. Union of India* (1997) 5 SCC 536, wherein the Supreme Court held that the claim for refund based on the decision rendered in another case cannot be sustained. The only reason stated before the Commissioner for the delay in filing the appeal was that he learned that the Commissioner (Appeals), Ernakulam, has in the case of Smt. Beena Moni, a member of the Cochin Stock Exchange allowed her claim for payment towards building fund. Therefore, he preferred this application to exercise the power under section 264 of the Act. Such a course of action is not permissible in the light of the Supreme Court judgment. The order of assessment insofar as the petitioner is concerned has become final and the same cannot be reopened on the ground that in another case a favourable order has been passed.

2. In the above circumstances, I do not find any grounds to interfere with the order. Original Petition fails and it is, accordingly, dismissed.

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