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Court : Kolkata

Decided On : Mar-22-2002

Reported in : (2002)3CALLT395(HC)

Judge : Amitava Lala, J.

Acts : [Constitution of India](#) - Articles 21 and 226; ;Entry of Goods into Calcutta Metropolitan Area Act, 1972 - Section 19; Entry of Goods into Calcutta Metropolitan Area Rules - Rule 25(5)

Appeal No. : Constitutional Writ Jurisdiction W.P. No. 2100 of 2001

Appellant : Sushil Kumar Sharma and ors.

Respondent : Director of Entry Taxes and ors.

Advocate for Def. : L.K. Gupta, Sr. Adv. and ;S. Das, Adv.

Advocate for Pet/Ap. : G. Chakraborty, Sr. Adv., ;U. Chakraborty and ;D. Roy Chowdhury, Advs.

Judgement :

Amitava Lala, J.

1. By this writ petition 42 writ petitioners are largely affected on account of non-payment of refund. All of them have made a joint writ petition after making an

appropriate Court Fees through Smt. Sanghamitra Bhattacharya, an advocate of this Court appearing with Mr. Gopal Chakraborty, learned senior counsel appearing for the petitioners. The Advocate-on-Record of the petitioners is Ms. Debmoti Roy Choudhury. Mr. Chakraborty has categorically contended before this Court that Smt. Bhattacharya is actually the Power of Attorney holder in respect of receiving the refund on account of the petitioners on the basis of the Power of Attorney but the authority refused to refund the respective amounts through her.

2. Mr. L.K. Gupta, learned senior counsel appearing of behalf of the respondents, contended that letters were sent by registered post with A/D but those were returned by saying 'not claimed'. In one of such cases, no such building exists where the office of such petitioner claiming to be exist. In such circumstances, Mr. Gupta has brought to my notice to the appropriate provision of law. It appears from Section 19 of the taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 that such refund will be made to the dealer by whom such tax has been paid. Rule 25(5) of the said Act says that refund payment order of such amount will be made to the dealer for engagement etc. In the proviso thereunder it says in case of loss of dealer's copy of receipt necessary for the same, refund may be made on the certified copy of such receipt issued by the prescribed authority to the dealer and by recording the payment in the relevant Cash Book. In all such cases indemnity bond shall be obtained from the dealer to the satisfaction of the prescribed authority. An appropriate notes shall also be recorded in the original or the triplicate copy of the receipt as the case may be. Against this back ground Mr. Gupta contended that the authority is no standing in the way of refund but to whom it will be refunded is a big question.

3. On the other hand, Mr. Chakraborty contended before this Court that since Ms. Bhattacharya is holding Power of Attorney under Section 85 of the Evidence Act, the Court shall presume that every document purporting to be a Power of Attorney, and to have been executed before, and authenticated by, a Notary Public or any Court, Judge, Magistrate, Indian Counsel or Vice-Council or representative of the Central Government, was so executed and authenticated. Hence, when the petitioners are being represented by the Power of Attorney-holder, there cannot be any embargo in not realising such amount by such Power of Attorney-holder in

compliance with the formalities, if any, to protect the interest of the authorities so that in future no claim can be realised by any of the parties other than the Power of Attorney-holder or person identified by such Power of Attorney-holder. Upon perusing the definition clause under the Act, I find 'dealer' means a person, who either on his own account or on account of a principal causes entry or takes delivery or entitled to take delivery of the goods on such entry in the local area. The consignor can nominate any person as dealer. If one does not receive the goods upon entry and goods are sold to third party, he or she may be treated as dealer. Therefore, meaning of the word 'dealer' for the purpose of recovery of tax is very wide. Generally a man who deals with something can be construed as 'dealer'. Suppose one is handling with the delivery of the goods on account of the dealer can also be said to be the dealer. He will be accountable to tax on account of the recorded dealer. In such case the authority normally receives the amount of tax on account of such recorded dealer from the person who deals with the matter. I say it is normal because whenever one wants to pay tax, fees, charges etc. to any authority it appears to be easier than refund the same. Whether the same has been paid by the dealer directly to such authority or not is immaterial to them. But when the question of refund to one comes forward treatment becomes stiffer and stiffer. There are two reasons for the same. One is mind set of the people attached to such authority. The other is question of accountability. But one should not forget that refund is also part and parcel of tax, fees and charges. Therefore, when it can be collected from any person other than the dealer on his account it can also be refunded to any other person other than the dealer on his account. The only proof of representation of the concerned dealer is the required documentary for refund. Such part has to be governed by the general law of evidence. Can it be justifiably said that if the dealer dues refund cannot be made to any of his representative in spite of showing authenticated document on his behalf? My answer is 'No'. A question of exigency or unusual circumstances is also essential part of legal sanction either specifically or impliedly. However, I can understand the agony in the mind of the authority.

4. Therefore, the disbursement will be made by the authority to the Power of Attorney-holder or the person identified by the Power of Attorney-holder as dealer, and in such cases disbursement so made will be treated as refund to the

respective dealer in compliance with the disbursement under Section 19 read with Rule 25(5) and proviso thereunder. Thereafter the disbursement was actually made to the dealer or not will be sole responsibility of the Power of Attorney-holder. Disbursement will be made as expeditiously as possible but not beyond the period of three months from the date of communication of this order.

5. At the time of passing this order, a dispute cropped up as regards payment of interest and costs alongwith the refund of the principal sum. Since the 'question of refund to whom' has been sorted out by the Court I have now come to a further conclusion about refund with or without interest and what would be the cut off date. Under normal circumstances, the tribunal is the final adjudicating authority. Therefore, from that very date the payment of interest has to be calculated alongwith the refund. But I find hereunder that the claim of interest 12% p.a. has been made on and from 16th August, 2000 on the basis of the order of the Supreme Court dated 8th May, 2000. Although Mr. Gupta, learned counsel has taken a plea that the refund was not made due to non-availability of actual dealers but that cannot be the ground of refund without interest. No such law is available whether the interest will be granted or not, but principally all the Courts including the Supreme Court have held on numerous occasions that interest should be granted alongwith the refund. Therefore, I hold that the refund will have to be made with interest. Next dispute is what would be the cut off date. According to me, the dispute can be set at rest if the cut off date for grant of interest is fixed from the date of the order passed by the Supreme Court on 8th May, 2000. Therefore, the payment of interest @ 12% will be made from that date of the order till the date of actual refund but at a simple rate. However, considering the balancing factor I do not want to go to such controversial chapter for the purpose of imposition of any cost. Therefore, no payment of cost is allowed under the order of the Court either for making this writ petition before this Court or for any claim of refund to be made by the authority concerned.

Thus writ petition stands disposed of.

Let xeroxed certified copy of this judgment be supplied to the parties by the department within seven days from the date of putting in requisition for drawing up

and completion of the order as well as the certified copy thereof.

All parties are to act on a xeroxed signed copy minutes of the operative part of this judgment upon usual undertaking and as per the satisfaction of the Officer of this Court in respect as above.

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