

(1977) 01 AHC CK 0010

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 552 of 1976

CHANDRAPAL SINGH

APPELLANT

Vs

STATE OF U.P. and Others

RESPONDENT

Date of Decision: Jan. 25, 1977

Acts Referred:

- Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 - Section 3

Citation: (1977) 6 CTR 154(1)

Hon'ble Judges: R. M. Sahai, J

Bench: Division Bench

Judgement

R. M. SAHAI, J. - The petitioner is the proprietor of the Fir, namely, M/s. Chandrapal Birbhan Singh and carries on manufacturing of khansari sugar. The petitioner exercised option under the provision to S. 3 of the U.P. Sugarcane (Purchase) Tax Act, 1961 and agreed to pay tax in accordance with the provisions of Rule 13-A. in Form XIII, as provided under Rule 13-A, the petitioner declared that his unit had got two power crushers of the size of 11" X 14".

2. This petition has been filed against a demand notice dated 6th July, 1975 for payment of arrears of purchase tax due of the assessment year 1974-75. It has been urged by the petitioner that the demand is illegal inasmuch as the petitioner operated only one of the crushers whereas the amount demanded is for the two crushers regarding which the petitioner had made a declaration.

3. It is admitted that the petitioner filed an earlier writ petition which was numbered as Writ Petition No. 732 (Tax) of 1975 (decided on 26.7.76). This petition was dismissed by a division Bench of this Court. The petition related to the assessment year 1974-75. Counsel for the petitioner has urged that the only point decided in the earlier writ petition was regarding the enhancement of crushing capacity in Schedule 1 framed under Rule 13-A, as such the petitioner could file this petition and challenge the levy of tax for the assessment year 1974-75 on the ground that

the petitioner operated only one crusher.

4. We are not impressed by this argument. It is not denied that the points that being urged in this petition could have been urged by the petitioner in the earlier petition as well. It is well settled that if a point which could have been urged, had not been urged then the petitioner is debarred from raising that point by way of subsequent writ petition. In our opinion this petition is debarred by principles of constructive res-judicata.

5. The writ petition is consequently dismissed with costs.