
(2010) 09 GAU CK 0034

Gauhati High Court (Agartala Bench)

Case No: Writ Petition (C) 140 of 2010

Sarada Bricks Industries

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision: Sept. 29, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2011) 42 VST 485

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: P. Roy Barman, for the Appellant; N.C. Pal, G.A. and P. Gautam, for the Respondent

Judgement

I.A. Ansari, J.

Heard Mr. P. Roy Barman, learned counsel, appearing on behalf of the petitioners. Also heard Mr. N. C. Pal, learned Government Advocate, and Mr. P. Gautam, learned counsel, appearing on behalf of the respondents.

2. The petitioner No. 1 stands registered, as a dealer, under Tripura Value Added Tax Act, 2004 (in short, TVAT Act). The Memorandum, dated 23.10.2009, issued by the Commissioner of Taxes, Government of Tripura, provided that each brick kiln owner will pay Rs. 3,63,825/-, as tax, for the financial year 2009-10, in the four installments, as indicated in the said Memorandum, and, upon payment of each installment, the specific number of Form XXVI would be issued. Pursuant to the Memorandum, dated 23.10.2009, aforesaid, the petitioner No. 1 paid Rs. 1,40,000/- as first installment of taxes for the financial year 2009-10 and was, accordingly, issued 11 sets of Form XXVI. The petitioner No. 1, thereafter, paid the second installment of Rs. 1,40,000/- and upon payment so made, the petitioner No. 1, as the petitioners claim, became entitled to receive another 11 sets of Form XXVI, only 5 forms were issued. Thereafter, the petitioner deposited the remaining installments of tax in

terms of the Memorandum, dated 23.10.2009, for the financial year 2009-10. Despite the payments, which have been made by the petitioners, the respondents have refused to issue Form XXVI after the said 16 numbers of Form XXVI had been issued to the petitioner.

3. Aggrieved by the fact that the requisite number of Form XXVI in terms of the Memorandum, dated 23.10.2009, were not being issued to the petitioner, the petitioner has impugned the said action of the respondents by filing this writ petition seeking to invoke this Court's extra-ordinary power under Article 226 commanding the respondents to issue requisite number of Form XXVI in terms of the Memorandum, dated 23.09.2010.

4. Resisting the writ petition, the respondents contend that the petitioner No. 2 herein is one of the partners of M/S. Manu Bricks Industries and Manu Brick Industries had the taxable liability, for the financial year 2008-09, for a sum of Rs. 2,04,750/- and another sum of Rs. 2,80,000/- for the financial year 2009-10. As the said M/S. Manu Brick Industries had not paid the tax and, petitioner No. 2 was one of the partners of petitioner No. 1, the respondents have refused to issue Form XXVI to the petitioner No. 1.

5. While considering the present writ petition, suffice it to point out that unless a person becomes liable to pay tax, no taxable liability can be imposed on him. In the case at hand, petitioner No. 1 is, admittedly an entity, independent of the fact as to who its partner is. When the petitioner No. 1 has no taxable liability, Form No. XXVI could not have been refused to be issued in terms of the Memorandum, dated 23.10.2009. For the taxable liability, which M/S. Manu Brick Industries, may have incurred, the petitioner No. 2, as a partner thereof, may be personally liable; but, as far as the petitioner No. 1 is concerned, the same being a registered firm with persons, apart from petitioner No. 2, as partners, the respondents could not have, in law, refused to issue Form No. XXVI as indicated hereinbefore on the ground that petitioner No. 2 is or was a partner of M/S. Manu Brick Industries too.

6. Because of what pointed out at all, the impugned action of the respondents refusing to issue Form No. XXVI to the petitioner No. 1 cannot be sustained.

7. In the result and for the forgoing reasons, the respondents are hereby directed to issue, within a period of one week from today, Form No. XXVI, in terms of Memorandum, dated 23.09.2010 aforementioned, as may be permissible in law, without insisting upon making payment of taxable liabilities, if any, of M/S. Manu Brick Industries. But without insisting. As far as the taxable liability of M/S. Manu Brick Industries is concerned, it may be pointed out that M/S. Manu Brick Industries had impugned the application of the said Memorandum to M/S. Manu Brick Industries in a writ petition made under Article 226 of the Constitution of India, which gave rise to W.P. (C) 139 of 2010, and the same has been set aside and quashed by the Judgment and order, dated 29.09.2010, passed in the said writ

petition.