

(2009) 01 CAL CK 0011

Calcutta High Court

Case No: Writ Petition No. 1323 of 2008

M/s. Banbury Impex
(P) Ltd.

APPELLANT

Vs

Sales Tax Officer, N. S.
Road Charge and
Others

RESPONDENT

Date of Decision: Jan. 29, 2009

Acts Referred:

- Central Sales Tax Act, 1956 - Section 9(2)

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: S.K. Chakraborty, for the Appellant; R. Islam, for the Respondent

Final Decision: Allowed

Judgement

Soumitra Pal, J.

The Judgment of the Court was as follows:

1. The petitioner, a company under the Companies Act, 1956, and registered under the Central Sales Tax Act, 1956, is carrying on business as an importer-comradelier of DEPB licenses. Facts are that for the period from 14th June, 2003 to 31st March, 2004 necessary returns were filed and a sum of Rs. 1,65,172/- under the 1956 Act was deposited. Thereafter, as evident from the assessment order, being annexure -P1 to the writ petition, the Sales Tax Officer, N.S. Road Charge, Kolkata, the respondent No. 1 by an assessment order dated 16th June, 2006 found that a sum of Rs. 1,65,172/- was paid in excess. Submission is since payment was made in excess, the respondent No. 1 under the law was required to send the refund order in statutory form along with the assessment order. However, no such refund order was issued. Accordingly, the petitioner by letter dated 8th October, 2006 brought it to the notice of the said respondent and request was made for refund of the excess

amount along with interest. Since no refund was granted, this writ petition has been filed.

2. Mr. S.K. Chakraborty, learned advocate for the petitioner, submits that in view of the provisions contained in Section 9(2) of the Central Sales Tax Act, 1956, the provisions contained in the West Bengal Sales Tax Rules shall prevail. Referring to Section 60 of the West Bengal Sales Tax Act, 1994 and the Rules framed there under, it has been submitted that Rule 181 (4) of the West Bengal Sales Tax Rules, 1995 mandates the appropriate assessing authority to refund any amount of tax, penalty or interest paid by a dealer in excess. Therefore, as admittedly a sum of Rs. 1,65,172/- was paid in excess, appropriate directions for refund may be issued.

3. In order to decide the issue it is necessary to refer to Rule 181(4) of the West Bengal Sales Tax Rules, 1995 which is as under :-

"181. Demand notice for the amount of tax and penalty due from dealers. -

(4) If after an order of assessment made under rule 179 or rule 180 in respect of a dealer, the amount of tax payable and penalty payable, if any, is found to be less than the amount of tax paid by such dealer according to return in respect of the same period, the appropriate assessing authority shall serve a notice in Form 30 specifying the amount paid in excess, and allowing the refund u/s 60 enclose a Refund Adjustment Order authorising the dealer to adjust the amount paid in excess against the amount payable according to the return which falls due subsequent to the date of receipt of the Refund Adjustment Order by the dealer.

Provided that where any amount of tax, penalty or interest due from such dealer in respect of any other period remains unpaid by such dealer till the date of assessment, the appropriate assessing authority shall adjust the amount assessed to have been paid in excess towards the tax, penalty or interest, and thereupon, if any amount still remains refundable he shall specify such adjustment in the said notice in Form 30 and send to the dealer a Refund Adjustment Order for the amount still remaining refundable along with such notice:

Provided further that where a dealer makes an application any time but ordinarily not later than thirty days from the date of receipt of the Refund Adjustment Order for payment of the refundable amount otherwise than by way of a Refund Adjustment Order on the ground that there shall be no such amount of tax payable by him against which the refundable amount may be adjusted and if the appropriate assessing authority is satisfied to that effect, the said authority may refund the said amount to the dealer accordingly."

(Emphasis supplied)

4. Heard learned advocates for the parties. It appears from the assessment order, being Annexure- P1, that the petitioner had paid a sum of Rs. 1,65,172/- in excess. Rule 181(4) postulates that the appropriate assessing authority shall serve a notice

in Form 30 specifying the amount in excess and shall enclose the Refund Adjustment Order in terms of Section 60 of the West Bengal Sales Tax Act. In the instant case, though assessment was made and assessment order was communicated, no refund of Rs. 1,65,172/- was granted to the petitioner. Aggrieved the petitioner had represented by the letter dated 8th October, 2006, which went unheeded. Therefore, since the provisions contained in Rule 181(4) have been ignored and no refund was granted, the action on the part of the said respondent cannot be supported. Hence, the Sales Tax Officer, N. S. Road Charge, Kolkata, the respondent No. 1 - "the appropriate assessing authority" - is directed to refund a sum of Rs. 1,65,172/-, being the sum paid in excess to the petitioner, along with interest at the rate of 8% per annum to be calculated from 1st July, 2006 till the date of actual payment, within a fortnight from the date of presenting the certified copy of this order.

5. The writ petition is, thus, allowed.

6. No order as to costs.

7. Urgent xerox certified copy of this order, if applied for, be given to the parties on priority basis.