

Nagar Mahapalika, Kanpur and another

Vs

Sri Ram Mahadeo Prasad

Civil Appeal No. 959 of 1977, With Spl. Leave Petn. (Civil) No. 4824 of 1977

(M.M. Punchhi, R.M. Sahai JJ)

11.10.1990

### JUDGMENT

1. This appeal by special leave and the tagged special leave petition are being disposed of by a common order.
2. The appeal is against the appellate judgment and order dated 12-3-1976 (reported in 1977 Tax LR 1998) passed by a Division Bench of the Allahabad High Court rejecting the appeal of the appellant against an order of a single Judge of that High Court allowing the writ petition of the respondent who was held entitled to refund of terminal tax paid to the appellant, Nagar Mahapalika, Kanpur under mistake of law. It appears that in the Nagar Mahapalika of Kanpur terminal tax was in force for many years when in January, 1960 it tended to increase the rate of tax in some commodities as well as introduce new items in the taxed list. A Division Bench of the Allahabad High Court had occasion to test this measure in *J. K. Jute Mills v. Nagar Mahapalika, Kanpur*, Civil Misc. Writ No. 1200/60 and found it untenable on the strength of the decision of this Court in *Amraoti Municipality v. Ram Chandra*, reported in AIR 1964 SC 1166. The counsel for the Kanpur Nagar Mahapalika conceded the claim of the then writ petitioner. An view of the pronouncement of this Court. The Court then directed the Nagar Mahapalika, Kanpur to refund to the writ petitioner the amount collected in excess by way of terminal tax on the strength of the January 1960 Notification vide order dated 15-12-1967. Within three years from this date, the present respondent moved the High Court in a writ petition seeking similar relief. A learned single Judge of that Court relying on *J. K. Jute Mill's case (supra)* found the respondent entitled to the same relief. Even a subdued statement was made then by the counsel for the Nagar Mahapalika that tax thenceforth was not being realised at rates more than the rates which prevailed before the Notification of 1960. A direction was issued to the Nagar Mahapalika to refund the excess amount to the respondent on application but subject to the objections as regards limitation etc. However, the portion regarding objection to the limitation was removed by a subsequent review order. The original and the subsequent order was then subjected to two cross Letter's Patent Appeals
3. Mr. Goyal, learned counsel for the appellants has contended before us that the High Court has erred in maintaining the claim of the respondent by computing the period of limitation from the date of the judgment in *J. K. Jute Mill's case* with effect from 15-12-1967 whereas it ought to have computed the period with effect from 1964, the date when this Court decided *Amraoti Municipality's case* (AIR 1964 SC 1166). According to him, the legal principles were settled in *Amraoti Municipality's case* and were merely followed in *J. K. Jute Mill's case* without even quashing the Notification of January, 1960. A close reading of *J. K. Jute Mill's case*, reference of which has been made earlier, shows that the decision not only proceeded on the principles settled by this Court in *Amraoti Municipality's case* but also on a clear concession made by counsel for the

Nagar Mahapalika, and somewhat in the same way, the same stance was adopted by the counsel for the Nagar Mahapalika in the instant case before the High Court. We fail to see how the Nagar Mahapalika can get out of this concession made by its respective counsel at appropriate stages in this case. The claim of the respondent being within limitation and under S. 72 of the Indian Contract Act, the terminal tax having been paid under mistake of law, the inevitable consequence for the Court was to grant relief which was rightly granted. In this view of the matter, we find no force in the appeal and dismiss the same and logically the Special Leave petition as well, identical in nature as it is, but without costs.

4. It appears that in the Civil Appeal there was an interim order passed by this Court on 21-11-1977 while granting stay of refund of tax, conditioning that the Mahanagarpalika will pay interest @ 12% p.a. from the date of the judgment of the High Court on the dismissal of the appeal. The claim of the respondent to such interest from March 12, 1976 the date of the judgment of the Division Bench of the High Court is also allowed.

Order accordingly.

</html