

RAJASTHAN HIGH COURT

R.S.C.S. Producers Assocn.

Vs.

State of Rajasthan

Special Appeal No. 478 of 2000
(Rajesh Balia and Dinesh Maheshwari, JJ.)

27.05.2005

JUDGEMENT

Rajesh Balia and Dinesh Maheshwari, JJ.

1. The appeal has been listed for orders on office report that paper book required to be submitted by the appellant has not been submitted. The learned counsel for the appellant states that they have already filed the paper books.

2. However, we shall presently notice that necessity of paper book in the present case is not required inasmuch as no dispute of fact is required to be gone into and only question that is required to be considered in this appeal is that whether the learned single Judge was justified in refusing refund of cess deposited by the petitioner-appellant under the orders of the Court and subject to condition of the order. The learned single Judge denied refund on the principle of unjust enrichment.

3. The parties have agreed that the appeal may be heard finally.

4. The appellant-petitioner filed the writ petition claiming relief against levy of market fee levied under the provisions of the Rajasthan Agricultural Produce Markets Act, 1961. At the time of admitting the writ petition on 27-3-1992, the Court made the following interim order:

"Meanwhile, the members of the petitioner-Association may not be compelled to take a license but they will continue to pay market fee and that fee will be kept in separate account of the market committee and shall be refund to the petitioner in case the writ petition succeeds with interest at the rate of 12%".

5. By order dated 17-9-1997 after hearing the parties the order dated 27-3- 1992 was confirmed. The petition ultimately came to be allowed by the learned single Judge vide judgment under appeal dated 13-3-2000. However, instead of ordering refund of the market fee under the orders of the Court and subject to condition noticed above, the learned single Judge passed the following order:

"Thus, in view of the above, no order of refund can be made in favor of the petitioners, as it is not their averment anywhere in the petition that they had not passed over the liability to the consumers. In such circumstances, refund would prove to be a wind-fall for them. The consumers on whom the liability has been passed on, are not before this Court. Moreso, the recovery could not have been made from the petitioners after the notification dated 5-8-1998. It is clarified that if there is any recovery pending, respondents may realize from the petitioners."

6. Aggrieved with this order, this appeal is before us.

7. It may be noticed that the petition was not for claiming refund but for challenging the levy at the time of inception and there could not have been any averment by the petitioners in the petition that the market fee paid by them has not been passed on to the consumers. Looking for such an averment in the petition which has been filed before collection of market fee and which was paid under the orders of the Court during the pendency of the writ petition was obviously an incorrect premise.

8. It is also not the case of the respondents that there is any legislative provision which affects the right of the tax payer to claim refund, if ultimately tax is not found due and livable inasmuch it is not only the levy of market fee but collection thereof shall also have to be authorized by law. An unauthorized collection of tax by the State, unless otherwise provided under the statute, ordinarily cannot be withheld by the State.

9. The principle of unjust enrichment evolved for sustaining the provisions of Section 11-B under the Central Excise Act and for directing the refund to be made after commencement of Section 11-B to be strictly in accordance with provision made under Section 11B of the Central Excise Act cannot be applied *ipso facto* to the facts of the present case where there is no such requirement under the Statute.

10. It is pointed out by the learned counsel for the petitioner that question of refund of market fee collected in the circumstances like the present one is squarely covered by the Supreme Court decision rendered in *State of Orissa v. Mahanadi Coalfields Ltd.*,¹ It was a case, which has reached the Supreme Court, where the refund of amount of tax was denied to the respondent Mahanadi Coalfields Ltd. which has been deposited with the State of Orissa under the directions of the Court.

11. The objection of the State for withholding the refund on account of unjust enrichment was held to be frivolous by the Supreme Court in view of the conditions imposed by the Supreme Court under which the amount has been deposited. The Court noticed the submission that refund must be refused because it will amount to unjust enrichment and held:

"We consider it to be frivolous. The submission that the refund must be refused because it would amount to unjust enrichment cannot be countenanced since this Court's order dated 3-1-1994 in no uncertain words provided that on the respondents succeeding in the writ petitions, they shall, without any other condition or stipulation, be granted refund together with accrued interest. By our order of 11-8-1995, we secured the amount by directing Mahanadi to deposit the amount in this Court subject to their contentions. Accordingly, the amount of Rs. 49,22,68,098.89 came to be deposited on 31-8- 1995."

12. In view of the aforesaid conclusion, the Supreme Court directed to refund tax deposited with interest.

13. The facts of the present case are no different. As we have reproduced interim order passed by this Court, the Court has issued unconditional order that in case the appellant succeeds, the amount shall be refunded with interest @ 12%. Apparently, in view of the aforesaid decision, there was no justification for withholding the refund by this Court at the time of making an order while allowing the writ petition without noticing the fact that there was no statutory provision authorizing the State to withhold the refund of tax collected without authority of law.

14. In the circumstances, the appeal is allowed. We direct that the amount deposited under the orders of the Court as market fee with the respondents be refunded with

interest @ 12% per annum till the date of decision by the learned single Judge and thereafter @ 9% per annum until the date of payment.

No order as to costs.

Appeal allowed.

Cases Referred.

1. 1996 DNJ (SC) 234 : (AIR 1996 SC 3339)