

## **REFUND OF TAX PAID UNDER MISTAKE OF LAW**

**Commissioner of Sales Tax, U.P vs Auriaya Chamber of Commerce [1986 (25) E.L.T. 867 (S.C.)]**

### **Factual Summary of the Case**

1. Favourable Order was passed by this Court in Budh Prakash Jai Prakash's case on 3rd May, 1954
2. Appellant Filed the Revision application for quashing the order of his case in 1955 before Sales Tax Officer
3. Revision Application dismissed the Revision Application in 1958 on reason that application has been filed after long delay
4. Assessee filed for Refund application on 24.05.1959 before Sales Tax Officer
5. Refund Application was dismissed considering Article 96 of Limitation Act, 1908
6. Revision was filed before the High Court upon Rejection by Sales Tax Officer
7. High Court Held that judgment came to be known in May, 1954, then in our opinion, when the assessee had made an application in 1955, it was not beyond the time

### **Reference to Other Laws**

Article 96 of Limitation Act, 1908- For relief on the ground of mistake- Limitation Period shall be three years from the date when the mistake becomes known to the plaintiff.

Section 72 of the Indian Contract Act, 1872 recognised that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. In this case it is not disputed that mistake of law is also a mistake covered by the provisions of section 72 of the Indian Contract Act

### **Court Verdict**

The rules or procedures are hand-maids of justice not its mistress. It is apparent in the scheme of the Act that sales tax is leviable only on valid transaction. If excess amount is realised, refund is also contemplated by the scheme of the Act. In this case undoubtedly sales tax on forward contracts have been illegally recovered on a mistaken view of law. The same is lying with the Government. The assessee or the dealer has claimed for the refund in the revision. In certain circumstances refund specifically has been mentioned. There is no prohibition against refund except the prohibition of two years under the proviso of Section 29- Para 29

Where indubitably there is in the dealer legal title to get the money refunded and where the dealer is not guilty of any laches and where there is no specific prohibition against refund, one should not get entangled in the cobweb of procedures but do substantial justice. The above requirements in this case, in our opinion, have been satisfied and therefore we affirm the direction of the Additional Judge (Revisions), Sales Tax for refund of the amount to the dealer and affirm the High Court's judgment on this basis. Para 31

### **Refund for the Tax Paid under Mistake of Law**

1. Where the state has no legal right to received it is the duty of the state to refund the tax of the amount paid
2. When the tax has be paid under mistake of law, Principle of Section 72 of the Indian Contract Act to be followed
3. Where the Tax has been collected without authority of law as contemplated under Article 265, right of refund was embedded in the Payment of Tax
4. Where the tax has been paid under Mistake of Law and the taxing authority not able to make refund, remedy through the Court is Open.