07.05.2024
Item No.10
gd/ssd

MAT/202/2023
IA NO: CAN/1/2023, CAN/2/2023
AJAY KUMAR MAHESWARI
VS
UNION OF INDIA AND ORS.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
..for the Appellant.

Md. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
..for the State.

Mr. Kaushik Dey,
Ms. Ekta Sinha
..for the CGST Authorities.

1. The only question now to be decided in this appeal is whether the appellant can be directed to pay interest on the amount which was refunded to the appellant and thereafter found to be not liable to be refunded and the appellant was directed to repay the amount which the appellant has repaid and the same has also been re-credited.

2. Admittedly, the refund was made pursuant to an application submitted by the appellant which was considered by the authority and the order was passed.

3. After a period of time it was found that the refund was not permissible under law and, therefore, an order was passed directing the appellant to repay the amount which was refunded.

4. This order was accepted by the appellant and pursuant to orders passed in this appeal from time to time, the amount has been repaid by the appellant which has also been re-credited.

5. Thus, considering the peculiar facts and circumstances of this case, the appellant cannot be burdened with payment of interest on the amount which was refunded to him since the order of refund was passed by the authority and there is no allegation of any misrepresentation or incorrect statement made by the appellant to enable him to secure the refund.

6. Therefore, the claim for interest and penalty made by the department is not tenable and, accordingly, the said demand is set aside.

7. Equally so, the appellant cannot be penalized by imposing penalty since the appellant has not been charged of committing any fault or misrepresentation.

8. With the above direction, the appeal stands allowed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)