(2025) 09 AHC CK 0733

In the Allahabad High Court

Case No : Writ Tax No. 4542 Of 2025

Dcm Shriram Industries Ltd And Another — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 25-09-2025

Acts Referred:

Specific Relief Act, 1963 — Section 34
Family Courts Act, 1984 — Section 7
Prohibition of Benami Property Transactions Act, 1988 — Section 3, 4

Citation : (2025) 09 AHC CK 0733

Hon'ble Judges : Arindam Sinha, J;Avnish Saxena, J

Bench : Division Bench

Advocate : Ashutosh Pratap Singh, Manoj Kumar Singh, Mayank Kumar Agrawal, Saroj Giri

Final Decision : Disposed Of

Judgement

Shekhar B. Saraf. J

1. Heard Mr. Punit Agarwal, learned counsel appearing on behalf of the petitioners and Mr. Ankur Agarwal, learned Standing Counsel for the State.

2. This is an application filed under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by the inaction on the part of the respondent authorities in complying with the assessment order dated 01.10.2022 for the Financial Year 2017–18. By the said order, a sum of Rs. 5,00,00,000/- has been directed to be refunded, subject to the rule of unjust enrichment. It is to be noted that the issue with regard to the taxability of the amount has already been settled by a Division Bench of this High Court in Jain Distillery Private Limited vs. State of U.P. and Ors., 2021 (10) ADJ 69. The relevant paragraphs 73 and 74 are delineated below:

"73. Consequently, all the writ petitions deserve to be allowed. It is declared, the State lost its legislative competence to enact laws, to impose tax on sales of

ENA, upon the enactment of the 101st Constitution Amendment. Consequently, and upon considering Section 174(1) (i) of UPGST. Act, 2017, the impugned Notification dated 17.12.2019, insofar as it seeks to impose UPVAT on ENA, Rectified Spirit and SDS, is ultra vires, both on account of lack of (i) legislative competence and (ii) valid delegation. It is therefore quashed. Consequentially, all assessment Orders/Notices dated 30.6.2021, 21.6.2021, 8.6.2021, 15.6.2021, 11.6.2021, 7.7.2021, the (administrative) Circulars/letters dated 10.6.2021 and 11.6.2021, impugned in these writ petitions, holding otherwise are also quashed.

74. It is further directed, subject to applicability of the rule against unjust enrichment, any amount that may have been deposited by the petitioners (except petitioners claiming under this order, in Writ Tax 355 of 2020), by way of UPVAT on ENA on or after 1.7.2017, may be refunded to them, within a period of one month from today."

3. In light of the above judgment of the High Court, the assessment order was passed by the authority concerned. It is to be noted that a Special Leave Petition has been filed on behalf of the State Government, wherein an order was passed by the hon'ble Supreme Court which is delineated below:

"1 Issue notice.

2 Mr Kumar Dushyant Singh, learned counsel, accepts notice on behalf of the first respondent.

3 Counter affidavit be filed within a period of four weeks from the date of service.

4 Tag with SLP(C) No 7735 of 2022."

4. It is agreed by the parties appearing on both sides that the Supreme Court did not grant any stay on the order passed by the High Court, that is being assailed before the Supreme Court.

5. It is a trite law that unless a superior Court passes an order of stay, the order of the court below remains binding on all the parties to the lis. Furthermore, any judgment of the High Court of Allahabad is applicable to the entire State of Uttar Pradesh. Article 265 of the Constitution of India very categorically states that no tax can be levied without the authority of law. This principle has been reiterated in the judgment of the High Court in the Jain Distillery Private Limited (supra).

6. In light of the same, it is clear that the amount that has been held by the State Authorities is without the authority of law and is required to be refunded, subject to the provisions of the Uttar Pradesh Value Added Tax Act, 2008, specially Section 43, which provides for the procedure for disbursement of amount wrongly realized by the dealers as tax. In the present case, both the buyer and the seller of the goods are before the Court. The liability of the tax in the present case has been passed on to the buyer of the goods, as per the finding in the impugned order.

7. In light of the same, we direct the authority concerned to refund the money to

the buyer, i.e., petitioner No.2, upon an indemnity bond being furnished by petitioner No.2 in accordance with law to the satisfaction of the authorities, within a period of eight weeks from the date.

8. Learned counsel appearing on behalf of the petitioner has also sought interest on the amount lying with the authorities to be paid. However, we are of the view that, at the present moment, only the principal amount should be returned to the petitioners and the interest be kept pending with the authorities and only be returned after the decision of the Hon'ble Supreme Court.

9. With the above directions, this writ petition is disposed of.

10. The impugned order dated 19.07.2025, rejecting the refund, is quashed and set aside.