(2011) 09 AHC CK 0321

In the Allahabad High Court

Case No : Writ Tax No. 332 of 2008

Elin Electronics Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Citation : (2011) 09 AHC CK 0321

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We have heard Shri Nishant Mishra for the Petitioner. Shri S.P. Kesarwani appears for the State Respondents.

2. By this writ petition the Petitioner has prayed for following reliefs:

A. To issue a writ, order or direction in the nature of certiorari quashing the circular dated 29.11.05 (Annexure-5 to the writ petition) issued by the Respondent No. 3.

B. To issue a writ, order or direction in the nature of certiorari quashing the assessment order dated 24.3.2007 (Annexure-4 to the writ petition) in so far it relates to imposition of tax at the rate of 10% on the value of goods dispatched by the Petitioner to outside the State of U.P. after execution of job work.

C. To issue a writ, order or direction in the nature of certiorari quashing the consequential recovery notice dated 30.01.08 (Annexure-7 to the writ petition) issued by the Respondent No. 3.

3. In Civil Misc. Petition (Tax) No. 1190 of 2008 (M/s A.C.P.L. Jewels Private Ltd. v. Union of India and Ors. connected with a bunch of writ petitions, we had, after ollowing the orders passed by the Supreme Court dated 31.3.2009, disposed of all the writ petitions with directions to complete the assessment, and for reassessment where such proceedings have been initiated, for treatment of the

transactions of job-works and goods returned to tax.

4. This writ petition also raises the same question of law, and is thus disposed of with the same directions as follows:

We have taken into account the submissions, the judgment of the Supreme Court dated 31.3.2009, arising out of the judgment of the Division Bench of this Court in Ambica Steels (supra), as well as the Circular Letter issued by the Commissioner, Trade Tax Department dated 26.6.2009, and consequently without going into the merits of the challenge to the vires of Section 6-A of the Act or other submissions, we dispose of all the writ petitions with the following directions:

(1) In all the cases, in which transactions of job-work and goods-returned are involved, the assessment orders only to the extent that the tax was imposed on such transactions for want of Form F of the Central Sales Tax are set aside. The Petitioners will appear and submit before the assessing authority a certified copy of this judgment in six weeks to complete the assessment proceedings with regard to such transactions only, on its own merits, after examining the transactions between the parties, and keeping in mind that the Assessee is not in a position to obtain Form F for no fault of his; and

(2) In the cases where the Assessee has been subjected to reassessment proceedings in which the transactions of job-work and goods-returned are involved, the reassessment orders only to the extent that the tax was imposed on such transaction/s for want of Form F of the Central Sales Tax are set aside. The Assessee will appear before the Reassessing Authority and submit a certified copy of this judgment in six weeks, to complete the reassessment proceedings in respect of such transactions only, on its own merits after examining the transactions between the parties, keeping in mind the findings recorded earlier on such transactions, and also that the Assessee is not in a position to obtain Form F, for no fault of his.

There will be no order as to costs.

