(2006) 01 AHC CK 0242

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 62 and 63 of 2006

Ellora Mechanical Products Pvt. Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 10, 29, 29(1)

Citation : (2006) 148 STC 276

Hon'ble Judges : Saroj Bala, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : M.R. Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

1. By means of these two writ petitions filed by M/s. Ellora Mechanical Products Pvt. Ltd., Gautambudh Nagar, the petitioner prays for a writ, order or direction in the nature of mandamus directing the Deputy Commissioner (Assessment)-5, Trade Tax, Noida, Gautambudh Nagar to refund the amount, which was deposited by the petitioner in pursuance of the stay order dated February 22, 2005 passed by this Court in Civil Misc. Writ Petition No. 265 of 2005, preferred by the petitioner. It appears that the respondent No. 3 in respect of the assessment years 2000-01 and 2001-02 had passed assessment orders creating huge demands. The petitioner had already deposited the admitted tax during the assessment years in question. Feeling aggrieved by the assessment orders, the petitioner preferred separate appeals before the Joint Commissioner (Appeals), Trade Tax, Noida, Gautambudh Nagar. The appeals filed by the petitioner were dismissed by the Joint Commissioner (Appeals), Trade Tax, Noida, whereupon the petitioner preferred second appeals u/s 10 of the Act before the Trade Tax Tribunal, Ghaziabad. The petitioner also submitted the application for waiving/ relaxing the requirement of pre-deposit of one third amount of disputed tax which is a pre-requisite for entertaining the appeals. The Tribunal vide order dated January 15, 2005 had rejected the waiver application filed by the

petitioner and directed the petitioner to deposit 1/3rd amount of disputed tax against which the petitioner approached this Court by filing Civil Misc. Writ Petition No. 265 of 2005 in which this Court vide order dated February 22, 2005 had stayed the realisation of the disputed amount of tax for the assessment years 2000-01 and 2001-02 upon the condition that the petitioner would deposit 25 per cent of the disputed amount of tax within a period of fifteen days and furnish security for the balance amount in the form other than cash or bank guarantee, within one month. This Court had further directed that after the amount is deposited as above, the Tribunal may hear the appeals expeditiously preferably within a period of two months. According to the petitioner it had deposited the amount of 25 per cent of the disputed amount of tax within the prescribed period. The Tribunal vide order dated September 30, 2005 had allowed both the appeals and after setting aside the orders passed by the Joint Commissioner (Appeals) as also the assessing authority remanded the matter back to the assessing authority for passing a fresh assessment order in accordance with law in the light of the direction given therein. After the Tribunal had set aside the assessment orders and had remanded the matter to the assessing authority for decision afresh, the petitioner made a joint application for both the assessment years seeking refund of the sum of Rs. 6,73,264 being deposited by it pursuant to the interim order passed by this Court in Civil Misc. Writ Petition No. 265 of 2005. The application was filed on October 14, 2005 followed by the reminder on November 7, 2005. The grievance of the petitioner is that the respondent No. 3 is not refunding the amount deposited by the petitioner pursuant to the interim order passed by this Court.

2. The writ petitions were presented before the court on January 9, 2006 which came up before the court on January 12, 2006 when the learned Standing Counsel was directed to obtain instructions as to why the amount is not being refunded.

3. Sri M.R. Jaiswal, learned Standing Counsel, upon the instructions received, submitted that the respondents are not refunding the amount as there is no specific order of refund as required u/s 29 of the U.P. Trade Tax Act, 1948.

4. As a pure legal question is involved, we proceed to decide both the writ petitions at the admission stage itself.

5. We find that this Court in the case of Hind Lamps Limited v. Commissioner of Sales Tax, Lucknow [2004] 136 STC 483 : [2004] UPTC 80 : [2004] 24 NTN 254, in paragraph 13 of the reports has held that a party is entitled to refund of only those amount, which were paid or deposited during the pendency of appeal, not referable to any admitted tax liability.

6. We are in respectful agreement with the aforesaid decision of this Court. As the petitioner has deposited a sum of Rs. 6,73,264 during the pendency of the appeals and the same is not referable to any admitted tax liability, the petitioner is entitled for the refund. Even on a plain reading of section 29(1) of the U. P.

Trade Tax Act, 1948 it is clear that a duty is cast upon the assessing authority to refund to a dealer any amount of tax, fees or other dues paid in excess of the amount due from him under the Act. Till such time assessment is not made, any amount due under the Act shall be referable to the admitted tax liability only. Any amount which is deposited in excess of admitted tax liability upon interim orders passed by the appellate authority or by this Court, in the absence of determination of the liability either by virtue of an assessment or otherwise, cannot be said to be an amount due under the Act.

7. In view of the foregoing discussion, we allow both the writ petition and direct the Deputy Commissioner (Assessment)-5, Trade Tax, Noida, Gautambudh Nagar, respondent No. 3 to forthwith refund Rs. 6,73,264 after verification of the deposit, to the petitioner within seven days from the date a certified copy of this order is filed before the said respondent.

8. The office is directed to issue a certified copy of this order to the learned Counsel for the parties on payment of usual charges within 24 hours.

