(2017) 02 AHC CK 0196

In the Allahabad High Court

Case No : Trade Tax Revision No. 27 of 2007

Lucent Technologies (P) Ltd. APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

Citation : (2017) 95 UPTC 327

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Kunwar Saksena, Advocate, for the Applicant; S.C. B.K. Pandey and U.K. Pandey, Advocate, for the Opposite Party

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—Despite service of notice upon the revisionist, none has appeared on its behalf. In such circumstances, the matter is taken up for hearing ex-parte against the revisionist.

2. The Full Bench while answering the reference has been pleased to rely upon the adjudication made by the Apex Court in Commissioner of Sales Tax U.P. v. M/S Hind Lamps Ltd.,reported in 2008 U.P.T.C., 978. Their Lordship of the Supreme Court have been pleased to hold that expression, "found to be refundable" must be as result of adjudication, after adjusting any amount permitted in law. Provisions of Rules- 89 and 90 have also been referred to in para-11 of the judgment of the Apex Court, which reads as under:-

"11. The expression used is "found to be refundable". In other words, it must be as a result of adjudication. The amount has to be found to be refundable. In the instant case, there is no such adjudication. Even otherwise, the power of adjustment lies with the authority under the Statute. While granting refund, he has to first find out whether there is any amount which has to be adjusted against tax or other amounts outstanding against the dealer under the Act or the Central Act and the balance has to be refunded. This power of adjustment lies only with the authority under the Statute. The dealer cannot make any adjustment on his own, and not certainly under the proviso to sub-section (1) of Section 29 of the Act as has been held by the High Court. The Explanation I makes the position further clear that the date of refund shall be deemed to be the date on which first intimation regarding preparation of the refund voucher is sent to the dealer in the prescribed manner. Obviously, therefore, date of refund is relatable to the intimation regarding the preparation of the refund voucher. Explanation II shows that the expression "refund" includes the adjustment which is permissible under the proviso to sub-section (1). It is to be noted that the manner in which the refund has to be granted is provided in Rules 89 and 90 appearing in Chapter XV."

3. The Tribunal has relied upon the judgment of this Court in M/s Oriflaim India Ltd. v. Assistant Commissioner (Assessment-I), Trade Tax, Noida reported in STC (2005) 698, wherein it is held that liability of interest accrue only after refund order is passed in terms of the Section 29(3) of the Act. The Tribunal has also relied upon an earlier judgment of this Court reported in 1983 U.P.T.C., 583 M/s Indodan Milk Products Ltd. v. State of U.P. and others, which is consistent with the exposition of law laid down by the Hon''ble Apex Court in M/s Hind Lamps Ltd. (supra). In view of the authoritative pronouncement of Law by the Larger Bench of this Court, it is held that the view taken by the Tribunal that in the absence of an order passed by the competent authority, holding the assessee entitled to refund, no direction for payment of interest and principal can be issued is the correct view taken, and the reference is answered accordingly.

4. Revision is accordingly disposed of.

