
(2006) 02 AHC CK 0201
In the Allahabad High Court
Case No : Trade Tax Revision No. 61 of 2006

Lucent Technologies Pvt. Ltd.

APPELLANT

Vs

Commissioner, Trade Tax

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 29, 29(1), 29(2)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 71

Citation : (2006) 02 AHC CK 0201

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Kunwar Saksena, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act hereinafter referred to as "Act") is directed against the order of Tribunal dated 09.12.2005 for the assessment year 1997-98.

2. Following two questions have been raised in the present revision:

1. Whether, on the facts in the circumstances of the case, the applicant was entitled to refund of a sum of Rs. 26,40,470/- paid excess of tax due in view of the provisions of Section 29(1) of the U.P. Trade Tax Act read with Rule 71 of U.P. Trade Tax Rules as also the judgment of this Hon'ble Court in the case of Hind Lamps Ltd. v. State of U.P 2004 UPTC 80

2. Whether, on the facts and in the circumstances of the case, the applicant was also entitled to interest (a) 12% as provided for u/s 29(2) of the Act w.e.f 9.3.05 i.e. date on which order of the First Appellate Authority was received by the assessing authority, setting aside the assessment order?

3. Brief facts of the case are that applicant is a Private Limited Company, incorporated under the Indian Companies Act, 1956. It is alleged that it did not

carry on any business of buying and selling inside the State of U.P. and is not a dealer under U.P. Trade Tax Act, It is alleged that the applicant entered into a contract on 18.05.1996 with Escotel Mobile Communications Limited. The aforesaid contract provided for import of equipment and accessories, installation and supervision of equipments installed, of all the hardware, software for G.S.M. Networking of mobile phone on turn-key basis iii accordance with functional specifications set out in the aforesaid contract in certain parts of India including Western U.P. Applicant accordingly, imported certain goods such as Cables, Handles, Terminal Wave Guards, Rounding Kits accessories thereof etc on Form-31 supplied by Escotel, which were stored at Godowns situated at Sahibabad (Ghaziabad) Assessing authority passed the assessment order on 31.03.2000 for the assessment year 1997-98 and a sum of Rs. 26,40,470/- was levied towards tax. Applicant did not admit any liability of tax in as much he claimed to has not carried on any business of buying and selling within the State of U.P. Applicant filed appeal before the Joint Commissioner (Appeals). Joint Commissioner (Appeals) vide order dated 17.02.2005 allowed the appeal and remanded back the matter to the assessing authority. It is alleged that the said appellate order was received by the assessing authority on 09.03.2005. In the meanwhile, the entire amount of Rs. 26,40,470/- was realised by coercive method. After the appellate order being passed and the appeal being allowed, applicant asked the assessing authority to refund the amount, which has been recovered by adopting the coercive method. In support of the contention he relied upon the decision of this Court in the case Hind Lamps Limited, Firozabad v. CST, reported in 2004 UPTC 80 wherein it has been held that as soon as the order of assessment is set aside, amount deposited by the dealer over and above admitted tax liability is refundable to the dealer on the principal of restitution. The aforesaid refund application had been rejected by the assessing authority vide order dated 14.06.2005 Appeal filed by the applicant against the said order has also been rejected by the Joint Commissioner (Appeals) vide order dated 16.09.2005 Applicant filed second appeal before the Tribunal Tribunal by the impugned order rejected the appeal and refused to allow the refund.

4. Heard learned Counsel for the parties.

5. Learned counsel for both the parties agreed that the issue involved in the present revision is squarely covered by the latest Division Bench decision of this Court in Writ Petition No. 62 of 2006, Ellora Mechanical Products Pvt. Ltd., Noida v. State of U.P. and Ors., decided on 13.01.2006 In the aforesaid case, following the decision of this Court in the case Hind Lamps Limited, Firozabad v. CST (Supra), Division Bench of this Court has directed to refund of the amount on the remand of the case, which was recovered towards disputed tax during the pendency of the appeal. Division Bench of this Court held as follows:

We find that this Court in the case Hind Lamps Limited v. Commissioner of Sales Tax, Lucknow 2004 NTN (24) 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.

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, 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.

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.

6. Respectfully following the aforesaid Division Bench decision of this Court, order of the Tribunal is liable to be set aside and the assessing authority is directed to refund the amount, recovered in pursuance, of the order dated 31.03.2000 for the assessment year 1997-98, recovered during the pendency of the appeal other than admitted tax, if any within a period of seven days from the date of production of the certified copy of this order. Assessing authority is also directed to pay the interest in accordance to Section 29 of the Act.

7. In the result, revision is allowed. Order of the Tribunal is set aside.