(2011) 10 AHC CK 0085

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 805 of 2011

M/S Hindustan Aeronautics Limited — APPELLANT

Vs

Commissioner Commercital Tax Lko. — RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Citation : (2011) 10 AHC CK 0085

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Hon''ble Arun Tandon, J.—Heard Sri Rahul Agarwal, learned Counsel for the Assessee and Sri B.K. Pandey, learned Standing Counsel for the department.

2. No purpose would be served by keeping the present commercial/ trade tax revision pending, in view of the order proposed to be passed today.

3. M/s Hindustan Aeronautics Ltd. Kanpur, the Assessee has filed this Commercial/Sales/ Trade Tax Revision against the order of the Trade Tax Tribunal dated 12th October, 2011 passed in Second Appeal No. 468 of 2011 (Assessment Year 2007-2008). By mean of the order impugned, the Trade Tax Tribunal while entertaining the appeal filed by the Assessee against the order of the first appellate authority dated 29th September, 2011 has been pleased to grant complete waiver from the requirement of deposit of 1/3rd of disputed amount. However, while considering the interim stay application, it has found it appropriate to provide stay of 85% of the disputed amount only. It is against this part of the order that the present commercial tax revision has been filed.

4. On behalf of the Assessee it has been vehemently contended that despite reference being made to the judgment of the Hon''ble High Court and orders of the Tribunal passed in respect of previous assessment years, wherein complete 100% stay had been granted and despite specific plea being raised that M/s Hindustan Aeronautics Ltd. is nothing but an another arm of the Government of India, Ministry of Defence, the Tribunal has recorded absolutely No. reason while

providing stay of only 85% of the disputed amount. It is contended that the Hon''ble Supreme Court of India as well as the Division Bench of this Court have repeatedly held that if the Assessee has strong prima face case covered by earlier orders/judgments of the High Court/Tribunal, then the issue of financial hardship becomes redundant.

5. Judged in light of the aforesaid, this Court would have normally set aside the order of the Tribunal and would have remanded the mater to the Tribunal for reconsideration of the interim stay application. However, such course is not being followed in the peculiar facts and circumstances of the case, inasmuch as this Court is satisfied that the interest of substantial justice would be served by substituting the order of the Tribunal asking the Assessee to deposit 15% of the disputed amount in cash as hereunder:

The Assessee may furnish security other than cash or bank guarantee to the satisfaction of the Assesseeing authority for the 15% of the disputed amount within one month from today. The attachment of the bank account of the Assessee affected on 13th October, 2011 in terms of the order of the Tribunal shall be lifted immediately.

6. In case of default, the Assessee will not be entitled to the benefits of this order.

7. The present writ petition is disposed of accordingly.

