(2016) 02 AHC CK 0308

In the Allahabad High Court

Case No : Writ Tax No. 49 of 1999

M/S. Jhunjhunwala Vanaspati Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Citation : (2016) 92 UPTC 279

Hon'ble Judges : Tarun Agarwala and Pramod Kumar Srivastava, JJ.

Bench : Division Bench

Advocate : S.M.K. Chaudhary, K. Saxena, S.D. Singh, S.P.Gupta, Advocates, for the Petitioner; C.S.C, for the Respondent

Final Decision : Disposed Off

Judgement

1. The petitioner had filed the present writ petition praying for the following reliefs:

"1. To issue suitable writ, order or direction in the nature of mandamus directing the respondents to permit the petitioner to deposit composition amount U/s 7-D of the Act after adjusting the amount of Rs. 1,24,79,310/- to which or in respect regard to which the petitioner is entitled to exemption U/s 4A and 4AA of the Act.

2. To issue suitable writ, order or direction in the nature of mandamus directing the respondents to refund a sum of Rs. 52,91,910/- being the amount deposited in excess towards composition money U/s 7D of the Act.

2a. To issue a writ, order or direction in the nature of writ of certiorari, quashing the circular letter no.553 dated 3.11.99, letter no.4375 dated 7.10.2002, letter no.344 dated 19.5.2003 and letter no.1142 dated 18.10.2004 (Annexure No.12 to 17 to the writ petition respectively), to the extent that the composition scheme could not be applicable to such manufacturer of Vanaspati Ghee who are new Unit as defined U/s 4-A of the Act.

3. In alternative to issue suitable writ, order or direction in the nature of

mandamus or certiorari quashing composition scheme as announced by the State Government U/s 7D of the Act (Annexure No.1 to the petition) in so far as it denies exemption of Trade Tax U/s 4A and 4AA of the Act which is available to the petitioner.

4. To issue any other suitable writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

5. Award the cost throughout to the petitioner."

2. The writ Court while entertaining the writ petition had passed an interim order dated 26th February, 1999, which is extracted hereunder:

"Issue notice.

Respondents are directed to file counter affidavit by 15th March, 1999. Rejoinder affidavit, if any, thereto by 20.3.99.

List on 22.3.1999.

If the petitioner pays 50 percent of the sum due on account of 4th and 5th instalments of the composition tax under Section 7-D of the Act, the respondents shall not proceed for any recovery proceedings till 30th of March, 1999.

The respondents shall issue necessary sales tax declaration forms."

3. The said interim order continued from time to time. During the pendency of the writ petition, the petitioner was granted an eligibility certificate under Section 4-A of the U.P. Trade Tax Act for the extended period 1998-99.

4. In the light of the aforesaid, Sri S.P. Gupta, the learned Senior Counsel assisted by Sri Krishna Agarwal, the learned counsel for the petitioner has fairly stated that the petitioner will approach the authority concerned with regard to payment of the balance composition tax and/or for refund and, therefore, has prayed that a liberty may be granted to withdraw the writ petition to enable them to approach the authority concerned for this purpose.

5. Permission granted.

6. Liberty is given to the petitioner to approach the authority concerned for the aforesaid purposes.

7. The petitioner will move an application within four weeks from today before the authority concerned and the authority concerned will decide the matter within three months thereafter. For a period of four months or till such time the authority decides the matter, the interim order granted by this order dated 26th February, 1999 shall continue to operate.

8. The writ petition is disposed of.

