(2010) 04 AHC CK 0294

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 6 of 2005

S.V.H. Tech Pvt. Ltd. APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Citation : (2010) 257 ELT 176

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bharati Sapru, J.—Heard Sri Kunwar Saxena, assisted by Sri Piyush Agrawal, learned Counsel for the assessee and learned Standing Counsel for the State.

2. This revision has been filed by the assessee being aggrieved by the order passed by the Trade Tax Tribunal dated 4-10-2004.

3. I have heard learned Counsel on both sides and also perused the material on record.

The questions referred to are hereunder:

(a) Whether on the facts and circumstances of the case, proceedings u/s 21 were justified and valid?

(b) Whether on the facts and circumstances of the case Dish Antenna can be classified as electronic goods not covered by any other notification?

(c) Whether the Tribunal is legally justified in treating the Dish Antenna as Satellite Receiver, although they are different items and treated as such in technical and common parlance?

4. Insofar as the question-A is concerned, there was no fresh material on record on the basis of which the department could have issued the notice u/s 21. The Section 21 notice dated 29-3-2003 does not reflect that there was any fresh

material before the department on the basis of which this notice has been sent. There is only reference to discussion as to whether the Dish Antenna is the same as a Satellite Receiver.

5. In view of the fact that there was no fresh material, the question-A is answered in favour of the assessee and against the department. The Section 21 proceedings are therefore, liable to be set aside in view of a Division Bench decision of this Court in the case of Apollo Tyres Limited v. State of U.P. and Ors. 2010 (42) NTN 169.

6. In so far as the questions B&C are concerned, it is abundantly clear now from various expert opinions that a Dish Antenna is not the same as the Satellite Receiver rather both are different. A Dish Antenna is simple machine, which is only capable of receiving whereas a Satellite Receiver is a more sophisticated machine, which not only receives transmissions but can also emit and forward transmissions.

7. This is the view taken by the Tribunal that both are the same is not correct and is set aside. The questions B&C are also decided in favour of the assessee and against the department.

8. This revision is allowed.